IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY, INTERNATIONAL,)
Plaintiff/Respondent,)
)
vs.)
)
GERALD ARMSTRONG,)
Defendant/Appellant.)

NO. A075027

CLERK'S TRANSCRIPT ON APPEAL

FROM A JUDGMENT MADE AND ENTERED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

VOLUME 22

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

DEPARTMENT 1

CHURCH OF SCIENTOLOGY, INTERNATIONAL, Plaintiff, vs. GERALD ARMSTRONG, Defendant.	No. 157680

GARY W. THOMAS	JUDGE
JOHN P. MONTGOMERY	COURT EXECUTIVE OFFICER
ELAINE PASSARIS	REPORTER

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EVIDENCE IN SUPPORT OF OPPOSITION TO MOTIONS FOR SUMMARY ADJUDICATION OF 20TH CAUSE OF ACTION, AND 13TH, 16TH, 17TH & 19TH CAUSES OF ACTION OF SECOND AMENDED COMPLAINT VOLUME I, CON'T (INCLUDING EXHIBIT A, ET SEQ.) 9/18/95 5948

EVIDENCE IN SUPPORT OF OPPOSITION TO MOTIONS FOR SUMMARY ADJUDICATION OF 20TH CAUSE OF ACTION; AND 13TH, 16TH, 17TH & 19TH CAUSES OF ACTION OF SECOND AMENDED COMPLAINT VOLUME II (INCLUDING EXHIBIT M) 9/18/95 6124

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff, vs. GERALD ARMSTRONG, Defendant.	No. C 420153
MARY SUE HUBBARD, Intervenor.	MEMORANDUM OF INTENDED DECISION

In this matter heretofore taken under submission, the Court announces its intended decision as follows:

As to the tort causes of action, plaintiff, and plaintiff in intervention are to take nothing, and defendant is entitled to Judgment and costs.

As to the equitable actions, the court finds that neither plaintiff has clean hands, and that at least as of this time, are not entitled to the immediate return of any document or objects presently retained by the court clerk. All exhibits

A.

received in evidence or marked for identification, unless specifically ordered sealed[1], are matters of public record and shall be available for public inspection or use to the same extent that any such exhibit would be available in any other lawsuit. In other words they are to be treated henceforth no differently than similar exhibits in other cases in Superior Court. Furthermore, the "inventory list and description," of materials turned over by Armstrong's attorneys to the court, shall not be considered or deemed to be confidential, private, or under seal.

All other documents or objects presently in the possession of the clerk (not marked herein as court exhibits) shall be retained by the clerk, subject to the same orders as are presently in effect as to sealing and inspection, until such time as trial court proceedings are concluded as to the severed cross complaint. For the purposes of this Judgment, conclusion will occur when any motion for a new trial has been denied, or the time within such a motion must be brought has expired without such a motion being made. At that time, all documents neither received in evidence, nor marked for identification only, shall be released by the clerk to plaintiff's representatives. Notwithstanding this order, the parties may at any time by written stipulation filed with the clerk obtain release of any or all such unused materials.

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[1] Exhibits in evidence No. 500-40; JJJ; KKK; LLL: MMM; NNN; OOO; PPP; QQQ; RRR; and 500-QQQQ.

Exhibits for identification only No. JJJJ; Series 500-DDDD, EEEE, FFFF, GGGG, HHHH, IIII, NNNN-1, OOOO, ZZZZ, CCCCC, GGGGG, IIIII, KKKKK, LLLLL, OOOOO, PPPPP, QQQQQ, BBBBBB, OOOOOO, BBBBBBB.

Defendant and his counsel are free to speak or communicate upon any of Defendant Armstrong's recollections of his life as a Scientologist or the contents of any exhibit received in evidence or marked for identification and not specifically ordered sealed. As to all documents, and other materials held under seal by the clerk, counsel and the defendant shall remain subject to the same injunctions as presently exist, at least until the conclusion of the proceedings on the cross complaint. However, in any other legal proceedings in which defense counsel, or any of them, is of record, such counsel shall have the right to discuss exhibits under seal, or their contents, if such is reasonably necessary and incidental to the proper representation of his or her client.

Further, if any court of competent jurisdiction orders defendant or his attorney to testify concerning the fact of any such exhibit, document, object, or its contents, such testimony shall be given, and no violation of this order will occur. Likewise, defendant and his counsel may discuss the contents of any documents under seal or of any matters as to which this court has found to be privileged as between the parties hereto, with any duly constituted Governmental Law Enforcement Agency or submit any exhibits or declarations thereto concerning such document or materials, without violating any order of this court.

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This court will retain jurisdiction to enforce, modify, alter, or terminate any injunction included within the Judgment.

Counsel for defendant is ordered to prepare, serve, and file a Judgment on the Complaint and Complaint in Intervention, and Statement of Decision if timely and properly requested, consistent with the court's intended decision.

Discussion

The court has found the facts essentially as set forth in defendant's trial brief, which as modified, is attached as an appendix to this memorandum. In addition the court finds that while working for L.R. Hubbard (hereinafter referred to as LRH), the defendant also had an informal employer-employee relationship with plaintiff Church, but had permission and authority from plaintiffs and LRH to provide Omar Garrison with every document or object that was made available to Mr. Garrison, and further, had permission from Omar Garrison to take and deliver to his attorneys the documents and materials which were subsequently delivered to them and thenceforth into the custody of the County Clerk.

Plaintiff Church has made out a prima facie case of conversion (as bailee of the materials), breach of fiduciary duty, and breach of confidence (as the former employer who provided confidential materials to its then employee for certain specific purposes, which the employee later used for other purposes to plaintiff's detriment). Plaintiff Mary Jane Hubbard has likewise made out a prima facie case of conversion and invasion of privacy (misuse by a person of private matters entrusted to him for certain specific purposes only).

While defendant has asserted various theories of defense, the basic thrust of his testimony is that he did what he did, because he believed that his life, physical and mental well being, as well as that of his wife were threatened because the organization was aware of what he knew about the life of LRH, the secret machinations and financial activities of the Church, and his dedication to the truth. He believed that the only way he could defend himself, physically as well as from harassing lawsuits, was to take from Omar Garrison those materials which would support and corroborate everything that he had been saying within the Church about LRH and the Church, or refute the allegations made against him in the April 22 Suppressive Person Declare. He believed that the only way he could be sure that the documents would remain secure for his future use was to send them to his attorneys, and that to protect himself, he had to go public so as to minimize the risk that LRH, the Church, or any of their agents would do him physical harm.

This conduct if reasonably believed in by defendant and engaged in by him in good faith, finds support as a defense to the plaintiff's charges in the Restatements of Agency, Torts, and case law.

Restatement of Agency, Second, provides:

> "Section 395f: An agent is privileged to reveal information confidentially acquired by him in the course of his agency in the protection of a superior interest of himself or a third person.

"Section 418: An agent is privileged to protect interests of his own which are superior to those of the principal, even though he does so at the expense of the principal's interest or in disobedience to his orders."

Restatement of torts, Second, section 271:

"One is privileged to commit an act which would otherwise be a trespass to or a conversion of a chattel in the possession of another, for the purpose of defending himself or a third person against the other, under the same conditions which would afford a privilege to inflict harmful or offensive contact upon the other for the same purpose."

The Restatement of Torts, Second, section 652a, as well as case law, make it clear that not all invasions of privacy are unlawful or tortious. It is only when the invasion is unreasonable that it becomes actionable. Hence, the trier of fact must engage in a balancing test, weighing the nature and extent of the invasion, as against the purported justification therefore to determine whether in a given case, the particular invasion or intrusion was unreasonable.

In addition the defendant has asserted as a defense the principal involved in the case of Willig v. Gold, 75 Cal.App.2d, 809, 814, which holds that an agent has a right or privilege to disclose his principal's dishonest acts to the party prejudicially affected by them.

Plaintiff Church has asserted and obviously has certain rights arising out of the First Amendment. Thus, the court cannot, and has not, inquired into or attempted to evaluate the merits, accuracy, or truthfulness of Scientology or any of its precepts as a religion. First Amendment rights, however, cannot be utilized by the Church or its members, as a sword to preclude the defendant, whom the Church is suing, from defending himself. Therefore, the actual practices of the Church or its members, as it relates to the reasonableness of the defendant's conduct and his state of mind are relevant, admissible, and have been considered by the court.

As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Howard Schomer to be credible, extremely persuasive, and the defense of privilege or justification established and corroborated by this evidence. Obviously, there are some discrepancies or variations in recollections, but these are the normal problems which arise from lapse of time, or from different people viewing matters or events from different perspectives. In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved with LRH, or Mary Jane Hubbard, or of the Scientology Organization, is on the one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH, and his ideas. Each has manifested a waste and loss or frustration which is incapable of description. Each has broken with the movement for a variety of reasons, but at the same time, each is, still bound by the knowledge that the Church has in its possession his or her most inner thoughts and confessions, all recorded in "pre-clear (P.C.) folders" or other security files of the organization, and that the Church or its minions is fully capable of intimidation or other physical or psychological abuse if it suits their ends. The record is replete with evidence of such abuse.

In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded, "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract the maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect."[2] From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn. In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile. At the same time it appears that he is charismatic and highly capable of motivating, organizing, controlling, manipulating, and inspiring his adherents. He has been referred to during the trial as a "genius," a "revered person," a man who was "viewed by his followers in awe." Obviously, he is and has been a very complex person, and that complexity is further reflected in his alter ego, the Church of Scientology. Notwithstanding protestations to the contrary, this court is satisfied that LRH runs the Church in all ways through the Sea Organization, his role of Commodore, and the Commodore's Messengers.[3] He has, of course, chosen to go into "seclusion," but he maintains contact and control through the top messengers. Seclusion has its light and dark side too. It adds to his mystique, and yet shields him from accountability and subpoena or service of summons.

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[2] Exhibit 500-HHHHH.

LRH's wife, Mary Sue Hubbard is also a plaintiff herein. On the one hand she certainly appeared to be a pathetic individual. She was forced from her post as Controller, convicted and imprisoned as a felon, and deserted by her husband. On the other hand her credibility leaves much to be desired. She struck the familiar pose of not seeing, hearing, or knowing any evil. Yet she was the head of the Guardian Office for years and among other things, authored the infamous order "GO 121669"[4] which directed culling of supposedly confidential P.C. files/folders for purposes of internal security. In her testimony she expressed the feeling that defendant by delivering the documents, writings, letters to his attorneys, subjected her to mental rape. The evidence is clear and the court finds that defendant and Omar Garrison had permission to utilize these documents for the purpose of Garrison's proposed biography. The only other persons who were shown any of the documents were defendant's attorneys, the Douglasses, the Dincalcis, and apparently some documents specifically affecting LRH's son "Nibs," were shown to "Nibs." The Douglasses and Dincalcises were disaffected Scientologists who had a concern for their own safety and mental security, and were much in the same situation as defendant. They had not been declared as suppressive, but Scientology had their P.C. folders, as well as other confessions, and they were extremely apprehensive. They did not see very many of the documents, and it is not entirely clear which they saw. At any rate Mary Sue Hubbard did not appear to be so much distressed by this fact, as by the fact that Armstrong had given the documents to Michael Flynn, whom the Church considered its foremost lawyer-enemy.[5] However, just as the plaintiffs have First Amendment rights, the defendant has a Constitutional right to an attorney of his own choosing. In legal contemplation the fact that defendant selected Mr. Flynn rather than some other lawyer cannot by itself be tortious. In determining whether the defendant unreasonably invaded Mrs. Hubbard's privacy, the court is satisfied the invasion was slight, and the reasons and justification for defendant's conduct manifest. Defendant was told by Scientology to get an attorney. He was declared an enemy by the Church. He believed, reasonably, that he was subject to "fair game." The only way he could defend himself, his integrity, and his wife was to take that which was available to him and place it in a safe harbor, to wit, his lawyer's custody. He may have engaged in overkill, in the sense that he took voluminous materials, some of which appear only marginally relevant to his defense. But he was not a lawyer and cannot be held to that precise standard of judgment. Further, at the time that he was accumulating the material, he was terrified and undergoing severe emotional turmoil. The court is satisfied that he did not unreasonably intrude upon Mrs. Hubbard's privacy under the circumstances by in effect simply making his knowledge that of his attorneys. It is, of course, rather ironic that the person who authorized G.O. order 121669 should complain about an invasion of privacy. The practice of culling supposedly confidental "P.C. folders or files" to obtain information for purposes of intimidation and/or harassment is repugnant and outrageous. The Guardian's Office, which plaintiff headed, was no respector of anyone's civil rights, particularly that of privacy. Plaintiff Mary Sue Hubbard's cause of action for conversion must fail for the same reason as plaintiff Church. The documents were all together in Omar Garrison's possession. There was no rational way the defendant could make any distinction.

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[3] See Exhibit K: Flag Order 3729 - 15 September 1978 "Commodore's Messengers."

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[4] Exhibit AAA.

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[5] "No, I think my emotional distress and upset is the fact that someone took papers and materials without my authorization and then gave them to your Mr. Flynn." Reporter's Transcript, p. 1006.

Insofar as the return of documents is concerned, matters which are still under seal may have evidentiary value in the trial of the cross complaint or in other third party litigation. By the time that proceedings on the cross complaint are concluded, the court's present feeling is that those documents or objects not used by that time should be returned to plaintiff. However, the court will reserve jurisdiction to reconsider that should circumstances warrant.

Dated: June 20, 1984

Paul G. Breckenridge, Jr.

PAUL G. BRECKENRIDGE, JR.
Judge of the Superior Court

Appendix

Defendant Armstrong was involved with Scientology from 1969 through 1981, a period spanning 12 years. During that time he was a dedicated and devoted member who revered the founder, L. Ron Hubbard. There was little that Defendant Armstrong would not do for Hubbard or the Organization. He gave up formal education, one-third of his life, money and anything he could give in order to further the goals of Scientology, goals he believed were based upon the truth, honesty, integrity of Hubbard and the Organization.

From 1971 through 1981, Defendant Armstrong was a member of the Sea Organization, a group of highly trained scientologists who were considered the upper echelon of the Scientology organization. During those years he was placed in various locations, but it was never made clear to him exactly which Scientology corporation he was working for. Defendant Armstrong understood that, ultimately, he was working for L. Ron Hubbard, who controlled all Scientology finances, personnel, and operations while Defendant was in the Sea Organization.

Beginning in 1979 Defendant Armstrong resided at Gilman Hot Springs, California, in Hubbard's "Household Unit." The Household Unit took care of the personal wishes and needs of Hubbard at many levels. Defendant Armstrong acted as the L. Ron Hubbard Renovations In-Charge and was responsible for renovations, decoration, and maintenance of Hubbard's home and office at Gilman Hot Springs.

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In January of 1980 there was an announcement of a possible raid to be made by the FBI or other law enforcement agencies of the property. Everyone on the property was required by Hubbard's representatives, the Commodore's Messengers, to go through all documents located on the property and "vet" or destroy anything which showed that Hubbard controlled Scientology organizations, retained financial control, or was issuing orders to people at Gilman Hot Springs.

A commercial paper shredder was rented and operated day and night for two weeks to destroy hundreds of thousands of pages of documents.

During the period of shredding, Brenda Black, the individual responsible for storage of Hubbard's personal belongings at Gilman Hot Springs, came to Defendant Armstrong with a box of documents and asked whether they were to be shredded. Defendant Armstrong reviewed the documents and found that they consisted of a wide variety of documents including Hubbard's personal papers, diaries, and other writings from a time before he started Dianetics in 1950, together with documents belonging to third persons which had apparently been stolen by Hubbard or his agents. Defendant Armstrong took the documents from Ms. Black and placed them in a safe location on the property. He then searched for and located another twenty or more boxes containing similar materials, which were poorly maintained.

On January 8, 1980, Defendant Armstrong wrote a petition to Hubbard requesting his permission to perform the research for a biography to be done about his life. The petition states that Defendant Armstrong had located the subject materials and lists of a number of activities he wished to perform in connection with the biography research.

Hubbard approved the petition, and Defendant Armstrong became the L. Ron Hubbard Personal Relations Officer Researcher (PPRO Res). Defendant claims that this petition and its approval forms the basis for a contract between Defendant and Hubbard. Defendant Armstrong's supervisor was then Laurel Sullivan, L. Ron Hubbard's Personal Public Relations Officer.

During the first part of 1980, Defendant Armstrong moved all of the L. Ron Hubbard Archives materials he had located at Gilman Hot Springs to an office in the Church of Scientology Cedars Complex in Los Angeles. These materials comprised approximately six file cabinets. Defendant Armstrong had located himself in the Cedars Complex, because he was also involved in "Mission Corporate Category Sort-Out," a mission to work out legal strategy. Defendant Armstrong was involved with this mission until June of 1980.

It was also during this early part of 1980 that Hubbard left the location in Gilman Hot Springs, California, and went into hiding. Although Defendant Armstrong was advised by Laurel Sullivan that no one could communicate with Hubbard, Defendant Armstrong knew that the ability for communication existed, because he had forwarded materials to Hubbard at his request in mid-1980.

Because of this purported inability to communicate with Hubbard, Defendant Armstrong's request to purchase biographical materials of Hubbard from people who offered them for sale went to the Commodore's Messenger Organization, the personal representatives of Hubbard.

In June of 1980 Defendant Armstrong became involved in the selection of a writer for the Hubbard biography. Defendant Armstrong learned that Hubbard had approved of a biography proposal prepared by Omar Garrison, a writer who was not a member of Scientology. Defendant Armstrong had meetings with Mr. Garrison regarding the writing of the biography and what documentation and assistance would be made available to him. As understood by Mr. Garrison, Defendant Armstrong represented Hubbard in these discussions.

Mr. Garrison was advised that the research material he would have at his disposal were Hubbard's personal archives. Mr. Garrison would only undertake a writing of the biography if the materials provided to him were from Hubbard's personal archives, and only if his manuscript was subject to the approval of Hubbard himself.

In October of 1980 Mr. Garrison came to Los Angeles and was toured through the Hubbard archives materials that Defendant Armstrong had assembled up to that time. This was an important "selling point" in obtaining Mr. Garrison's agreement to write the biography. On October 30, 1980, an agreement was entered into between Ralston-Pilot, ncv. F/S/O Omar V. Garrison, and AOSH DK Publications of Copenhagen, Denmark, for the writing of a biography of Hubbard.

Paragraph 10B of the agreement states that:

> "Publisher shall use its best efforts to provide Author with an office, an officer assistant and/or

research assistant, office supplies and any needed archival and interview materials in connection with the writing of the Work."

The "research assistant" provided to Mr. Garrison was Defendant Armstrong.

During 1980 Defendant Armstrong exchanged correspondence with Intervenor regarding the biography project. Following his approval by Hubbard as biography researcher, Defendant Armstrong wrote to Intervenor on February 5, 1980, advising her of the scope of the project. In the letter Defendant stated that he had found documents which included Hubbard's diary from his Orient trip, poems, essays from his youth, and several personal letters, as well as other things.

By letter of February 11, 1980, Intervenor responded to Defendant, acknowledging that he would be carrying out the duties of Biography Researcher.

On October 14, 1980, Defendant Armstrong again wrote to Intervenor, updating her on "Archives materials" and proposing certain guidelines for the handling of those materials.

It was Intervenor who, in early 1981, ordered certain biographical materials from "Controller Archives" to be delivered to Defendant Armstrong. These materials consisted of several letters written by Hubbard in the 1920's and 1930's, Hubbard's Boy Scout books and materials, several old Hubbard family photographs, a diary kept by Hubbard in his youth, and several other items.

Defendant Armstrong received these materials upon the order of Intervenor, following his letter of October 15, 1980, to her in which Defendant stated, at page 7, that there were materials in the "Controller Archives" that would be helpful to him in the biography research.

After these materials were delivered to Defendant Armstrong, Intervenor was removed from her Scientology position of Controller in 1981, presumably because of her conviction for the felony of obstruction of justice in connection with the theft of Scientology documents from various government offices and agencies in Washington, D.C.

During the time Defendant Armstrong worked on the biography project and acted as Hubbard Archivist, there was never any mention that he was not to be dealing with Hubbard's personal documents or that the delivery of those documents to Mr. Garrison was not authorized.

For the first year or more of the Hubbard biography and archive project, funding came from Hubbard's personal staff unit at Gilman Hot Springs, California. In early 1981, however, Defendant Armstrong's supervisor, Laurel Sullivan, ordered him to request that funding come from what was known as SEA Org Reserves. Approval for this change in funding came from the SEA Org Reserves Chief and Watch Dog Committee, the top Commodores Messenger Organization unit, who were Hubbard's personal representatives.

From November of 1980 through 1981, Defendant Armstrong worked closely with Mr. Garrison, assembling Hubbard's archives into logical categories, copying them and arranging the copies of the Archives materials into bound volumes. Defendant Armstrong made two copies of almost all documents copied for

Mr. Garrison - one for Mr. Garrison and the other to remain in Hubbard Archives for reference or recopying. Defendant Armstrong created approximately 400 binders of documents. The vast majority of the documents for Mr. Garrison came from Hubbard's personal Archives, of which Defendant Armstrong was in charge. Materials which came from other Archives, such as the Controller Archives, were provided to Defendant Armstrong by Scientology staff members who had these documents in their care.

It was not until late 1981 that Plaintiff was to provide a person to assist on the biography project by providing Mr. Garrison with "Guardian Office' materials, otherwise described as technical materials relating to the operation of Scientology. The individual appointed for this task was Vaughn Young. Controller Archives and Guardian Office Archives had nc connection to the Hubbard Archives, which Defendant Armstrong created and maintained as Hubbard's personal materials.

In addition to the assemblage of Hubbard's Archives, Defendant Armstrong worked continually on researching and assembling materials concerning Hubbard by interviewing dozens of individuals, including Hubbard's living aunt, uncle, and four cousins. Defendant Armstrong did a geneology study of Hubbard's family and collected, assembled, and read hundreds of thousands of pages of documentation in Hubbard's Archives.

During 1980 Defendant Armstrong remained convinced of Hubbard's honesty and integrity and believed that the representations he had made about himself in various publications were truthful. Defendant Armstrong was devoted to

Hubbard and was convinced that any information which he discovered to be unflattering of Hubbard or contradictory to what Hubbard has said about himself, was a lie being spread by Hubbard's enemies. Even when Defendant Armstrong located documents in Hubbard's Archives which indicated that representations made by Hubbard and the Organization were untrue, Defendant Armstrong would find some means to "explain away" the contradictory information.

Slowly, however, throughout 1981, Defendant Armstrong began to see that Hubbard and the Organization had continuously lied about Hubbard's past, his credentials, and his accomplishments. Defendant Armstrong believed, in good faith, that the only means by which Scientology could succeed in what Defendant Armstrong believed was its goal of creating an ethical environment on earth, and the only way Hubbard could be free of his critics, would be for Hubbard and the Organization to discontinue the lies about Hubbard's past, his credentials, and accomplishments. Defendant Armstrong resisted any public relations piece or announcement about Hubbard which the L. Ron Hubbard Public Relations Bureau proposed for publication which was not factual. Defendant Armstrong attempted to change and make accurate the various "about the author" sections in Scientology books, and further, Defendant rewrote or critiqued several of these and other publications for the L. Ron Hubbard Public Relations Bureau and various Scientology Organizations. Defendant Armstrong believed and desired that the Scientology Organization and its leader discontinue the perpetration of the

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massive fraud upon the innocent followers of Scientology, and the public at large.

Because of Defendant Armstrong's actions, in late November of 1981, Defendant was requested to come to Gilman Hot Springs by Commodore Messenger Organization Executive, Cirrus Slevin. Defendant Armstrong was ordered to undergo a "security check," which involved Defendant Armstrong's interrogation while connected to a crude Scientology lie detector machine called an E-meter.

The Organization wished to determine what materials Defendant Armstrong had provided to Omar Garrison. Defendant Armstrong was struck by the realization that the Organization would not work with him to correct the numerous fraudulent representations made to followers of Scientology and the public about L. Ron Hubbard and the Organization itself. Defendant Armstrong, who, for twelve years of his life, had placed his complete and full trust in Mr. and Mrs. Hubbard and the Scientology Organization, saw that his trust had no meaning and that the massive frauds perpetrated about Hubbard's past, credentials, and accomplishments would continue to be spread.

Less than three weeks before Defendant Armstrong left Scientology, he wrote a letter to Cirrus Slevin on November 25, 1981, in which it is clear that his intentions in airing the inaccuracies, falsehoods, and frauds regarding Hubbard were done in good faith. In his letter he stated as follows:

> "If we present inaccuracies, hyperbole or downright lies as fact or truth, it doesn't matter what slant we give them, if

disproved the man will look, to outsiders at least, like a charlatan. This is what I'm trying to prevent and what I've been working on the past year and a half.

. . .

"and that is why I said to Norman that it is up to us to insure that everything which goes out about LRH is one hundred percent accurate. That is not to say that opinions can't be voiced, they can. And they can contain all the hype you want. But they should not be construed as facts. And anything stated as a fact should be documentable.

"we are in a period when 'investigative reporting' is popular, and when there is relatively easy access to documentation on a person. We can't delude ourselves I believe, if we want to gain public acceptance and cause some betterment in society, that we can get away with statements, the validity of which we don't know.

"The real disservice to LRH, and the ultimate make-wrong is to go on assuming that everything he's ever written or said is one hundred percent accurate and publish it as such without verifying it. I'm

> talking here about biographical or non-technical writings. This only leads, should any of his statements turn out to be inaccurate, to a make-wrong of him, and consequently his technology.
>
> "That's what I'm trying to remedy and prevent.
>
> . . .
>
> "To say that LRH is not capable of hype, errors or lies is certanly ^sic] not granting him much of a beingness. To continue on with the line that he has never erred nor lied is counterproductive. It is an unreal attitude and too far removed from both the reality and people in general that it would widen public unacceptance.
>
> . . .
>
> ". . . That is why I feel the falsities must be corrected, and why we must verify our facts and present them in a favorable light."

The remainder of the letter contains examples of facts about Hubbard which Defendant Armstrong found to be wholly untrue or inaccurate and which were represented as true by the Hubbards and the Scientology Organization.

In December of 1981 Defendant Armstrong made the decision to leave the Church of Scientology. In order to continue in his commitment to Hubbard and Mr. Garrison in the biography project, he copied a large quantity of documents, which Mr. Garrison had requested or which would be useful to him for the biography. Defendant Armstrong delivered all of this material to Mr. Garrison the date he left the SEA Organization and kept nothing in his possession.

Thereafter, Defendant Armstrong maintained friendly relations with Hubbard's representatives by returning to the Archives office and discussing the various categories of materials. In fact on February 24, 1982, Defendant Armstrong wrote to Vaughn Young, regarding certain materials Mr. Young was unable to locate for Omar Garrison.

After this letter was written, Defendant Armstrong went to the Archives office and located certain materials Mr. Garrison had wanted which Hubbard representatives claimed they could not locate.

At the time Defendant Armstrong left the SEA Organization, he was disappointed with Scientology and Hubbard, and also felt deceived by them. However, Defendant Armstrong felt he had no enemies and felt no ill will toward anyone in the Organization or Hubbard, but still believed that a truthful biography should be written.

After leaving the SEA Organization, Defendant ARmstrong continued to assist Mr. Garrison with the Hubbard biography project. In the spring of 1982, Defendant Armstrong at Mr. Garrison's request, transcribed some of his interview tapes, copied some of the documentation he had, and assembled several more binders of copied materials. Defendant Armstrong also set up shelves for Mr. Garrison for all the biography research materials, worked on a cross-reference systems, and continued to do library research for the biography.

On February 18, 1982, the Church of Scientology International issued a "Suppressive Person Declare Gerry Armstrong," which is an official Scientology document issued against individuals who are considered as enemies of the Organization. Said Suppressive Person Declare charged that Defendant Armstrong had taken an unauthorized leave and that he was spreading destructive rumors about Senior Scientologists.

Defendant Armstrong was unaware of said Suppressive Person Declare until April of 1982. At that time a revised Declare was issued on April 22, 1982. Said Declare charged Defendant Armstrong with 18 different "Crimes and High Crimes and Suppressive Acts Against the Church." The charges included theft, juggling accounts, obtaining loans on money under false pretenses, promulgating false information about the Church , its founder, and members, and other untruthful allegations designed to make Defendant Armstrong an appropriate subject of the Scientology "Fair Game Doctrine." Said Doctrine allows an suppressive person to be "tricked, cheated, lied to, sued, or destroyed."

The second declare was issued shortly after Defendant Armstrong attempted to sell photographs of his wedding on boar Hubbard's ship (in which Hubbard appears), and photographs belonging to some of his friends, which also included photos o L.R. Hubbard while in seclusion. Although Defendant Armstrong delivered the photographs to a Virgil Wilhite for sale, he never received payment or return of his friend's photographs. When he became aware that the Church had these photographs, he went to the Organization to request their return. A loud and boisterous argument ensued, and he eventually was told to leave the premises and get an attorney.

From his extensive knowledge of the covert and intelligence operations carried out by the Church of Scientology of California against its enemies (suppressive persons), Defendant Armstrong became terrified and feared that his life and the life of his wife were in danger, and he also feared he would be the target of costly and harassing lawsuits. In addition, Mr. Garrison became afraid for the security of the documents and believed that the intelligence network of the Church of Scientology would break and enter his home to retrieve them. Thus, Defendant Armstrong made copies of certain documents for Mr. Garrison and maintained them in a separate location.

It was thereafter, in the summer of 1982, that Defendant Armstrong asked Mr. Garrison for copies of documents to use in his defense and sent the documents to his attorneys, Michael Flynn and Contos & Bunch.

After the within suit was filed on August 2, 1982, Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by Plaintiff; being assaulted by one of these individuals; being struck bodily by a car driven by one of these individuals; having two attempts made by said individuals apparently to involve Defendant Armstrong in a freeway automobile accident; having said individuals come onto Defendant Armstrong's property, spy in his windows, create disturbances, and upset his neighbors. During trial when it appeared that Howard Schomer (a former Scientologist) might be called as a defense witness, the Church engaged in a somewhat sophisticated effort to suppress his testimony. It is not clear how the Church became aware of defense intentions to call Mr. Schomer as a witness, but it is abundantly clear they sought to entice him back into the fold and prevent his testimony.

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

CHURCH OF SCIENTOLOGY
OF CALIFORNIA,
Plaintiff
and Appellant;

MARY SUE HUBBARD,
Intervener
and Appellant,

v.

GERALD ARMSTRONG,
Defendant
and Respondent.

B005912

(Super.Ct.No. C 420153)

COURT OF APPEAL - SECOND DIST.
FILED
DEC 18 1990
CLAY ROBBINS, JR. Clerk
Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County. Paul C. Breckenridge, Jr., Judge. Dismissed.

Rabinowitz, Boudin, Standard, Krinsky & Lieberman, Overland, Berke, Wesley, Gits, Randolph & Levanas, Peterson & Brynan, Eric M. Lieberman, Donald Randolph, Michael Lee Hertzberg and John G. Peterson for Appellant and Intervener.

Contos & Bunch, Flynn & Joyce, Bruce M. Bunch, Julia Dragojevic and Michael J. Flynn for Defendant.

The Church of Scientology of California (Church) sued former Church staff member Gerald Armstrong, alleging, inter alia, that he converted to his own use original confidential archive materials and photocopies of such materials, and disseminated the same to unauthorized persons, thereby breaching his fiduciary duty to the Church, which sought return of the documents, injunctive relief against further dissemination of the materials or information contained therein, imposition of a constructive trust over the property and any profits Armstrong might realize from his use of the materials, as well as damages. Mary Sue Hubbard, wife of Church founder L. Ron Hubbard, intervened in the action, alleging causes of action for conversion, invasion of privacy, possession of personal property [sic], and declaratory and injunctive relief. Armstrong cross-complained for damages for fraud, intentional infliction of emotional distress, libel, breach of contract, and tortious interference with contract. The cross-complaint was severed from the complaint and has not yet been tried.

Following a lengthy trial on the complaint, the trial court determined, as reflected in its statement of decision, that the Church had "made out a prima facie case of conversion (as bailee of the materials), breach of fiduciary duty, and breach of confidence (as the former employer who provided confidential materials to its then employee for certain specific purposes, which the employee later used for other purposes to plaintiff's detriment)." The court also found that Mary Sue Hubbard had "made out a prima facie case of conversion and invasion of privacy (misuse by a person of private matters entrusted to him for certain specific purposes only)."

The court found that Armstrong "did not unreasonably intrude upon Mrs. Hubbard's privacy under the circumstances", and that his conduct with respect to both plaintiffs was justified, in that he took and kept the documents because he believed that his and his wife's physical and mental well-being were threatened by the Church, and that he could only protect them by keeping the documents as evidence supportive of his statements about the Church, and by "going public" so as to minimize the risk that L. Ron Hubbard, the Church, or any of their agents would do him physical harm.

With respect to the materials taken by Armstrong, the court found "that neither plaintiff has clean hands, and that at least as of this time [neither is] entitled to the immediate return of any document or object[] presently retained by the court clerk."

Judgment was entered in Armstrong's favor on August 10, 1984.[1] With respect to the documents the court made the following orders:

> "(a) All documents and objects received in evidence or marked for identification during trial, unless specifically ordered sealed, are matters of public record and shall be available for public inspection or use to the same extent that any such exhibit would be available in any other lawsuit;
>
> "(b) Those exhibits specifically ordered sealed are as follows: Exhibits in Evidence Nos. 500-40; JJJ; KKK; LLL; MMM; NNN; OOO; PPP; QQQ; RRR; and 500-QQQQ. Exhibits for identification only Nos. JJJJ; Series 500-DDDD, EEEE, FFFF, GGGG, HHHH, IIII, NNNN-1, OOOO, ZZZZ, CCCCC, GGGGG, IIIII, KKKKK, LLLLL, OOOOO, PPPPP, QQQQQ, BBBBBB, OOOOOO, BBBBBBB;
>
> "(c) The 'inventory list and description' of materials turned over by counsel for Defendant Gerald Armstrong to the Court shall not be considered or deemed to be confidential, private or under seal;
>
> "(d) Defendant Gerald Armstrong and his counsel are free to speak or communicate upon any of Defendant Gerald Armstrong's recollections of his life as a Scientologist or upon the contents of any exhibit received in evidence or marked for identification and not specifically ordered sealed;

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[1] The judgment is not included in the present record. We take judicial notice of the record in Roes 1-200 v. Superior Court (B010793, B010402, B012860) which does include a copy of the judgment entered herein.

"(e) As to all documents and other materials held under seal by the Clerk, Defendant Gerald Armstrong and his counsel shall remain subject to the same injunctions as presently exist, at least until the conclusion of the proceedings on the Cross-Complaint of Defendant Gerald Armstrong.

"(f) In any other legal proceedings in which defense counsel, Contos & Bunch and Michael J. Flynn, or any of them, is of record, such counsel shall have the right to discuss exhibits under seal, or their contents, if such is reasonably necessary and incidental to the proper representation of his or her client;

"(g) If any court of competent jurisdiction orders Defendant Gerald Armstrong or his counsel to testify concerning the fact of any such exhibit, document, object, or its contents, such testimony shall be given, and no violation of this judgment will occur;

"(h) Defendant Gerald Armstrong and his counsel may discuss the contents of any documents under seal or . . . any matters . . . which this Court has found to be privileged as between the parties hereto, with any duly constituted governmental law enforcement agency or submit any exhibits or declarations thereto concerning such document or materials, without violating this judgment;

"(i) All other documents or objects presently in the possession of the Clerk of the Court and not marked as court exhibits, shall be retained by the Clerk subject to the same orders as are presently in effect as to sealing and inspection; until such time as trial court proceedings are concluded as to the severed Cross-Complaint of Defendant Gerald Armstrong.

"(j) For the purposes of this Judgment,

> conclusion will occur when any motion for new trial has been denied, or the time within [which] such a motion must be brought has expired without such a motion being made. At that time, all documents neither received in evidence, nor marked for identification only, shall be released by the Clerk to Plaintiff's [representatives]. Notwithstanding this Order, the parties may at any time, by written stipulation filed with the Clerk, obtain release of any or all such unused material;
>
> "(k) This Court will retain jurisdiction to enforce, modify, alter or terminate any injunction included within this Judgment."

Plaintiffs appeal, contending: (1) the defenses found by the trial court do not apply to their causes of action, (2) the defenses would not in any event defeat plaintiffs' claims for injunctive relief, (3) the trial court erred in applying the defense of unclean hands, (4) the court erred in unsealing certain of the documentary exhibits, and (5) the court erred in admitting "vast amounts" of hearsay and irrelevant evidence, resulting in a miscarriage of justice.

Armstrong contends the judgment is in all respects proper.

There is a threshold question, not raised by the parties, whether the judgment entered on the complaint is an appealable judgment. "As our Supreme Court stated in Collins v. Corse (1936) 8 Cal.2d 123, 124 . . .: 'If it is not an appealable order, it is the duty of this court on its own motion to dismiss the appeal.'" (DeGrandchamp v. Texaco, Inc. (1979) 100 Cal.App.3d 424, 430.)

As a general rule, "an appeal will be dismissed where a purported final judgment is rendered in a complaint without adjudicating the issues raised by a cross-complaint." (9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 56, p. 78.) "The authorities clearly hold that an action in which cross-complaint or counterclaim is also filed is not one wherein a multiplicity of final judgments may result. [Citations.]" (Clovis Ready Mix Co. v. Aetna Freight Lines (1972) 25 Cal.App.3d 276, 281.)

This is so because "[t]here can be but one final judgment in an action, and that is one which in effect ends the suit in the court in which it was entered, and finally determines the rights of the parties in relation to the matter in controversy. [Citations.]" (Stockton etc. Works v. Ins. Co. (1893) 98 Cal. 557, 577; DeGrandchamp v. Texaco, Inc., supra, 100 Cal.App.3d at p. 431.)

In DeGrandchamp, the court recognized that "[t]here are exceptions to this rule, and there is at least one acceptable device for avoiding it under certain circumstances." (DeGrandchamp v. Texaco, Inc., supra, 100 Cal.App.3d at p.431.) The only recognized exception relevant to our case is that discussed in Schonfeld v. City of Vallejo (1975) 50 Cal.App.3d 401, where the court considered the effect of severance pursuant to Code of Civil Procedure section, 1048[2] stating, at page 417: "Our research has disclosed no case that considers the conflict between the one final judgment rule and the severance statute, Code of Civil Procedure section 1048. An eminent authority notes that '. . . in complicated cases the one final judgment rule proves to be a delusion, and appeals from separate final judgments in a single action continue to present the most difficult problems in the field of appellate procedure' (6 Witkin, Cal. Procedure, Appeal, § 37, pp. 4051 and 4052).[3/] And we have indicated that even though a cause of action is severed and tried separately, pursuant to Code of Civil Procedure section 1048, a separate judgment is not necessarily the result (National Electric Supply Co. v. Mount Diablo Unified School Dist., 187 Cal.App.2d 418, 421-422 . . . .)."

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[2] Section 1048 provides, in part: "(b) The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action, including a cause of action asserted in a cross-complaint, or of any separate issue or of any number of causes of action or issues, preserving the right of trial by jury required by the Constitution or a statute of this state or the United States."

The Legislative Committee Comment--Assembly to section 1048 reads, in part: "Section 1048 does not deal with the authority of a court to enter a separate final judgment on fewer than all the causes of action or issues involved in an action or trial. See Code of Civil Procedure sections 578-579; 3 Cal.Jur.2d Appeal and Error § 40; California Civil Appellate Practice §§ 5.4, 5.15-5.26 (Cal.Cont.Ed.Bar 1966); 3 B. Witkin, California Procedure Appeal §§ 10-14 (1954). This question is determined primarily by case law, and Section 1048 leaves the question to case law development."

The Schonfeld court conceded that, "given the workload of the appellate courts of this state, it would be an unnecessary and wasteful burden for all concerned to rigidly adhere to the one final judgment rule. This court has previously indicated that pursuant to federal practice, separate appealable judgments may be rendered on counts that present separate claims for relief (Fed. Rules Civ. Proc., rule 54(b); see Reeves v. Beardall, 316 U.S. 283 [86 L.Ed.

[3/] Now see 9 Witkin, California Procedure (3d ed. 1985) Appeal, section 44, pages 67- 68.

1478, 62 S.Ct. 1085]; Sears, Roebuck & Co. v. Mackey, 351 U.S. 427 [100 L.Ed. 1297, 76 S.Ct. 895]; Cold Metal Process Co. v. United Co., 351 U.S. 445 [100 L.Ed. 1311, 76 S.Ct. 904]; Wilson v. Wilson, 96 Cal.App.2d 589, 596 . . . . At the time of our decision in Wilson, no California court had recognized such an exception . . . . The test is whether the circumstances here presented are so unusual that postponement of the appeal until the final judgment on Schonfeld's fourth cause of action would cause so serious a hardship and inconvenience as to require us to augment the number of existing exceptions (U.S. Financial v. Sullivan, 37 Cal.App.3d 5, 11-12 . . .; Western Electroplating Co. v. Henness, 172 Cal.App.2d 278, 283 . . .; see Gombos v. Ashe [(1958) 158 Cal.App.2d 517] 523)." (Schonfeld v. City of Vallejo, supra, 50 Cal.App.3d at p. 418; DeGrandchamp v. Texaco, Inc., supra, 100 Cal.App.3d at p. 434.)

In Schonfeld, the court held that a final judgment resulted as to properly severed causes of action, i.e., those that raised issues separate and independent from the cause of action remaining to be tried. (Schonfeld v. City of Vallejo, supra, 50 Cal.App.3d at pp. 418-419.) In DeGrandchamp, on the other hand, the facts could not be brought within this rule, as at least two remaining causes of action were "wholly dependent" upon the obligation which was the subject of the severed cause of action for declaratory relief upon which judgment had been entered. (DeGrandchamp v. Texaco, Inc., supra, 100 Cal.App.3d at p. 435; Highland Development Co. v. City of Los Angeles (1985) 170 Cal.App.3d 169, 179.)

The present case presents a somewhat different problem, as we are here concerned not with severance of a cause or causes of action, but of the complaint from the cross-complaint. The claims for relief are clearly separate and distinct. However, we cannot say that "the circumstances here presented are so unusual that postponement of the appeal until the final judgment on [the cross-complaint] would cause so serious a hardship and inconvenience as to require us to augment the number of existing exceptions [to the single judgment rule]." (Cf. Schonfeld v. City of Vallejo, supra, 50 Cal.App.3d at p. 418; Armstrong Petroleum Corp. v. Superior Court (1981) 114 Cal.App.3d 732, 737.)

Moreover, the record of the trial on the complaint, and the allegations of the cross-complaint, make it clear that there is considerable overlap of factual matters asserted as justification for Armstrong's taking of the plaintiffs' documents, and alleged by him as having caused him damage. The trial court acknowledged this overlap when it granted the motion to sever, but apparently felt that resolution of the issues relating to the conversion cause of action might expedite resolution of the remaining issues.

The factual overlap might not preclude our review of the judgment entered herein, were it not for the documents which are inextricably entwined with both complaint and cross-complaint. The primary object of the complaint is repossession of the documents by the plaintiffs. The primary exhibits at trial of Armstrong's cross-complaint will also come from among the documents. The trial court found that they belonged to the plaintiffs, but that the plaintiffs had unclean hands which justified delaying their return until the judgment entered on the cross-complaint is final. At that time, all documents "neither received in evidence, nor marked for identification," are to be released to plaintiff's representatives. Thus the court's order contemplates and calls for retention of the documents until the conclusion of the trial on the cross-complaint, and fails thereafter to finally dispose of the documents entered as exhibits[4] or marked for identification, including a number of sealed documents which are of particular importance to the plaintiff owners.

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[4] Code of Civil Procedure section 1952.2

(Footnote Continued)

The upshot is that disposition of a number of documents is left for the trial court's consideration at the close of trial on the cross-complaint, and the present judgment is not a final judgment.

Inasmuch as counsel informed us at oral argument that trial of the cross-complaint is scheduled to commence in January 1987, the interests of judicial economy would best be served by dismissing the present purported appeal and remanding the cause to the trial court for determination and judgment at the conclusion of the trial on the cross-complaint. In accordance with the general rule (9 Witkin, Cal. Procedure, Appeal, § 56, supra), the appeal will be dismissed; the issues raised herein may be considered upon an appeal from the judgment following trial of the cross-complaint, insofar as they are not then moot.

(Footnote 4 Continued)

provides: "[Up]on a judgment becoming final, at the expiration of the appeal period, unless an appeal is pending, the court, on its discretion, and on its own motion by a written order signed by the judge, filed in the action, and an entry thereof made in the register of actions, may order the clerk to return all of the exhibits and depositions introduced or filed in the trial or a civil action or proceeding to the attorneys for the parties introducing or filing the same." (Emphasis added.)

DECISION

The appeal is dismissed. Each party to bear its own costs on this appeal.

NOT TO BE PUBLISHED

DANIELSON, J.

We concur:

KLEIN, P.J.

HERRINGTON, J.*

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* Assigned by the Chairperson of the Judicial Council.

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
CLAY ROBBINS, JR., CLERK

DIVISION: 3 DATE: 01/15/87

Rabinowitz, Boudin, Standard, Krinsky
Eric M. Lieberman
740 Broadway
New York, NY 10003

B005912

RE: Church of Scientology of California,Etc
vs.
Armstrong, Gerald
Hubbard, Mary Sue
2 Civil B005912
Los Angeles No. C420153

PETITION FOR REHEARING DENIED

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name and Address)*: Toby L. Plevin, Esq. 6380 Wilshire Blvd., Suite 1600 L.A. CA 90048	TELEPHONE NO.: (213) 655-3183	CASE NUMBER: C 694 401
ATTORNEY FOR *(Name)*: Bent Corydon		
NAME OF COURT: L.A.S.C. POST OFFICE and STREET ADDRESS: 111 N. Hill St., L.A., CA 90012		**DEPOSITION SUBPENA**
PLAINTIFF/PETITIONER: Bent Corydon DEFENDANT/RESPONDENT: Church of Scientology International et al		For Personal Appearance ☒ and Production of Documents and Things

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(name, address, and telephone No. of deponent, if known)*:

Gerold Armstrong

1. **YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following time and place:**

Date:	Time:	Address:
October 20, 1989	10:00a.m.	Law Offices of Ford Greene 711 St. Francis Drake San Anselmo, CA 94960

a. ☐ As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 3. (Code of Civil Procedure section 2025 (d)(6).)

b. ☒ You are ordered to produce the documents and things described in item 3.

c. ☐ This deposition will be recorded by ☐ audiotape ☐ videotape and stenographically.

d. ☐ This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025 (u)(4).

2. ☐ **The personal attendance of the custodian of records or other qualified witness** ☐ **and the production of the original documents** are required by this deposition subpena. The procedure authorized by Evidence Code sections 1560 (b), 1561, and 1562 will not be deemed sufficient compliance with this subpena.

3. ☒ The documents and things to be produced and any testing or sampling being sought are described as follows:

See Exhibit "A", Attached

☐ Continued on attachment 3.

4. *A deposition permits an attorney to ask questions of a witness who is sworn to tell the truth. An attorney for other parties may then ask questions also. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. A witness may read the written record and change any incorrect answers before signing the deposition. The witness is entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpena or at the time of the deposition.*

5. You are ordered to appear in this civil matter in your capacity as a peace officer or other person described in Government Code section 68097.1.

Date: Clerk, by ______________________________, Deputy

DISOBEDIENCE OF THIS SUBPENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: September 28, 1989

Toby L. Plevin
(TYPE OR PRINT NAME)

(SIGNATURE OF PERSON ISSUING SUBPENA)

ATTORNEY FOR PLAINTIFF
(TITLE)

(See reverse for proof of service)

Form Adopted by Rule 982
Judicial Council of California

DEPOSITION SUBPENA—PERSONAL APPEARANCE

Code of Civil Procedure, §§ 2020, 2025

EXHIBIT "A" TO SUBPOENA DUCES TECUM

SCHEDULE OF DUCUMENTS TO BE PRODUCED

The witness is requested to produce all these documents as described below, within his possession, custody or control.

A. DEFINITIONS AND EXPLANATIONS

1. As used herein, the term "document" includes all written, typewritten, printed and graphic materials of whatever kind or nature, including, but not limited to, correspondence, notes, memoranda, telegrams and cables, telexes, telecopies, panafaxes, publications, contracts, agreements, insurance policies, minutes, offers, analyses, projections, studies, books, papers, records, reports, lists, calendars, diaries, statements, complaints, filings with any court, tribunal or governmemtal agency, corporate minutes, partnerships, agreements, ledgers, transcripts, summaries, agendas, bills, invoices, receipts, estimates, evaluations, personnel files, certificates, instructions, manuals, bulletins, advertisements, perioducals, accounting records, checks, check stubs, check registers, cancelled checks, money orders, negotiable instruments, sound recordings, films, photographs, mechanical or electronic recordings, tapes, transcriptions, blueprints, computer programs and data, and data processing cards.

2. As used herein, the term "document" further means all writings, originals and duplicates as defined in California Evidence Code Sections 250, 255, and 260, whether in draft, or otherwise, including but not limited to, copies and non-identical copies (whether different from the originals becase of notes or

marks made on or attahced to said copies, or otherwise).

3. The words "and" and "or" as used herein shall both mean "and/or."

4. If in response to this Notice to Produce Documents at Deposition you decline or refuse to produce any document based upon a claim of privilege, at the time of taking of this deposition you will be expected to state with respect to each such document the following:

(a) An identification of the document with reasonable specificity and particularity, including its nature (memo, letter, etc.), title and date;

(b) The exact nature of the privilege asserted;

(c) All of the facts upon which your claim of privilege is based or which supports said claim;

(d) With respect to each person who was present at the time the document was prepared:

(1) Their name and last known business and residential addresses and telephone numbers; and

(2) Their employer and job title or capacity at the time that the document was prepared;

(e) With respect to each individual and entity to whom the original or a copy of the document was sent:

(1) Their name and last known business and residential addresses and telephone numbers;

(2) Their employer and job title or capacity at the time that the original or the copy of the document was sent to them;

(3) The date(s) when the document or copy was sent; and

(4) By whom the document or copy was sent;

(f) With respect to each indicudual and entity who to the best of your knowledge, information or belief has seen the original or any copy of the document:

(1) Their name, and last known business and residential addresses and telephone numbers;

(2) Their employer and job title or capacity at the time the document or copy was seen by them; and

(3) The date(s) when the document or copy was seen by them.

(g) With respect to each individual or entity who to the best of your knowledge, information or belief had possession or custody of the original or any copy of the document:

(1) Their name, and last known business and residential addresses and telephone numbers;

(2) The inclusive dates during which they had possession or custody of the document or copy; and

(3) Their employer and job title or capacity at the time that they had possession of the document or copy; and

(h) Identify with reasonable specificity and particularity each document which refers to, discusses, analyzes, or comments upon the document which you claim is privileged, or which contains any and all of its contents.

B. DOCUMENTS AND THINGS TO BE PRODUCED

1. Any and all agreements and mutual releases between you and any and all Church of Scientology entities and individuals arising out of the lawsuit captioned Church of Scientology of California v. Gerold Armstrong and the related cross-action.

2. Any and all documents referring or relating in any way to the agreement(s) and/or release(s) in Category 1 above including without limitiation affidavits of compliance and correspondence or memos explaining the terms of the agreement.

3. Any and all documents referring or relating to potential threats of enforcement of the agreements and releases referenced in Category 1, above.

4. Any and all documents received by you subsequent to the agreements and/or releases set forth in Category 1 above from any Scientology organization or person or from any person you believe to be representing or working on behalf or any Scientology organization or person.

Lawrence E. Heller, Esq., Bar No. 69770
TURNER, GERSTENFELD, WILK & TIGERMAN
8383 Wilshire Boulevard
Suite 510
Beverly Hills, California 90211
(213) 657-3100

Attorneys for Defendants
AUTHOR SERVICES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BENT CORYDON,

Plaintiff,

vs.

CHURCH OF SCIENTOLOGY
INTERNATIONAL, INC.,
etc. et al.,

Defendants.

AND RELATED CROSS-ACTIONS

CASE NO. C 694 401

NOTICE OF MOTION AND MOTION OF DEFENDANT AUTHOR SERVICES, INC. TO DELAY OR PREVENT THE TAKING OF CERTAIN THIRD PARTY DEPOSITIONS BY PLAINTIFF; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF LAWRENCE E. HELLER AND HOWARD SCHOMER IN SUPPORT THEREOF

DATE: November 16, 1989
TIME: 9:00 a.m.
DEPT: 44

TO: PLAINTIFF AND HIS ATTORNEYS OF RECORD HEREIN.

PLEASE TAKE NOTICE that on November 16, 1989 at 9:00 a.m., or as soon thereafter as counsel can be heard, in Department 44 of the above-entitled Court located at 111 North Hill Street, Los Angeles, California, defendant AUTHOR SERVICES, INC. ("defendant ASI" hereinafter) will move the Court for an order to restrain plaintiff from taking certain third party depositions.

This application is made on the ground that great and irreparable harm will result to defendant ASI unless a restraining order is issued enjoining plaintiff from taking certain third party depositions, or conditioning those depositions upon a showing of relevance.

This Motion will be based upon this Notice, the attached Memorandum of Points and Authorities, the pleadings, records and files in this action, and such evidence as may be presented at the hearing of the Motion.

Dated: October 21, 1989

TURNER, GERSTENFELD, WILK & TIGERMAN

BY: ____________________
Lawrence E. Heller
Attorneys for Defendants
AUTHOR SERVICES, INC.

MEMORANDUM OF POINTS AND AUTHORITIES

Approximately two and one-half (2-1/2) years ago various Scientology entities, including some of the defendants herein, settled over a dozen cases involving hundreds of millions of dollars in alleged damages. Between six (6) to ten (10) of those cases were pending in this court and the Federal Court of the Central District of California.

One such case, which was not settled, entitled Wollersheim v. Church of Scientology of California, Case No. S011790 was intensely litigated in this very Court for close to six (6) years. That case culminated in a trial which lasted approximately eight (8) months, tying up one of this Court's courtrooms and judges exclusively for that period of time. During the course of the Wollersheim litigation, various issues were appealed, in one such instance resulting in a six (6) to eight (8) month stay of that litigation issued by the Honorable Sandra Day O'Connor, Justice of the United States Supreme Court. The Wollersheim litigation has recently been partly affirmed and partly reversed by the California Court of Appeals, and all parties expect that the appellate process will continue for at least another two (2) years.

Recognizing the tremendous time and financial burdens which litigation of this nature placed not only upon the litigants and their attorneys, but the courts involved as well, over a half dozen attorneys, including various California attorneys, entered into what can only be characterized as "herculean" settlement efforts. Those efforts ultimately resulted in the settlement of virtually all of the "Wollersheim-like" cases (where former Scientology staff members or parishioners instituted litigation against Scientology). Those settlements alleviated the truly gargantuan time and financial resources which would have been wasted in the absence of such a settlement. To effect these settlements also required an exercise of good faith on behalf of adverse litigants and attorneys who had been fiercely battling for a number of years prior to entering into the settlements.

One of the key ingredients to completing these settlements, insisted upon by all parties involved, was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences within the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners; and (3) the terms and conditions of the settlements themselves. Peace has reigned since the time the interested parties entered into the settlements, all parties having exercised good faith in carrying out the terms of the settlement, including the obligations of confidentiality.

Comes now the plaintiff herein, BENT CORYDON, and acting the role of a one man wrecking crew, he serves multiple subpoenas in a wholesale manner upon these former plaintiffs (and in some cases defendants); seeking material totally irrelevant to the issues involved in his litigation.

Without any question, CORYDON's intent in serving these various subpenas requesting depositions and the production of documents is to drive a wedge between these settling parties, in an illegal attempt to extort a settlement of his own from the defendants herein. Even a glance at the Request for Documents served as part of CORYDON's subpoena duces tecum re deposition upon these settling parties indicates that he has no interest in any issues respecting plaintiff's case. Rather, CORYDON appears to be on a mission to torpedo what can only be characterized as good faith, effective settlements which have alleviated a vast burden upon this Court. (See subpena served upon one Homer Schomer, an individual who had sued various Scientology entities and this moving defendant in the Federal Court of the Central District of California, attached hereto as Exhibit "A"[1]).

Attached to these moving papers is the declaration of one of the litigants who settled against Scientology, the aforesaid Homer Schomer. Mr. Schomer's declaration, conclusively exhibits that he has no evidence concerning CORYDON or CORYDON's relationship with any Scientology entity, is perhaps the best evidence of CORYDON's bad faith in attempting to effect the subject deposition discovery.

The other third parties CORYDON has subpenaed to deposition that ASI knows of have even less information concerning CORYDON. For instance one of the potential deponents who CORYDON has been trying to serve is attorney Michael J. Flynn, a Boston lawyer involved in most of the settlements which transpired some two and one-half (2-1/2) years ago.

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[1] Even a cursory review of the documents requested in Mr. Schomer's subpena indicate that they have nothing to do with Mr. CORYDON's case. They relate solely to the Settlement Agreement and documents attendant to that settlement. It is inconceivable that any of these documents could be relevant, even pursuant to discovery standards, to any issue in the instant litigation.

CORYDON and his attorney, Toby L. Plevin, obviously feel that they have hit upon a weak spot within the Church of Scientology's resolve to effectively defend this litigation. Their tactic is to illegally threaten to compel by subpena disclosure of confidential material irrelevant to the issues in his case. The fact that CORYDON's and Ms. Plevin's litigation tactics are in bad faith and an abuse of this Court's process appears to be of no avail to them.

CORYDON has been in litigation with most of the defendants herein for approximately eight (8) years. CORYDON sought dismissal of the litigation which he had previously instituted in the County of Riverside prior to the time that it was to go to trial in that Court, after he had litigated that case for over five (5) years. CORYDON thereafter instituted this litigation, clearly once again with no intent of going to trial on the merits, but rather in an attempt to "blackmail" these defendants through an attack upon the good faith settlements into which they had previously entered.

This moving party, (AUTHOR SERVICE, INC.) which was a party to at least one of the aforementioned settlements beseaches this Court to prevent CORYDON and/or his attorney from engaging in these unethical tactics under the guise of free wheeling discovery. These parties would ask this Court to issue a protective order preventing these depositions from going forward

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at least until CORYDON and his attorney have exhibited the relevance of these depositions.

Dated: October 24, 1989

TURNER, GERSTENFELD, WILK & TIGERMAN

BY: ______________________
Lawrence E. Heller
Attorneys for Defendants
AUTHOR SERVICES, INC.

DECLARATION OF LAWRENCE E. HELLER

I, LAWRENCE E. HELLER, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the Courts of the State of California and am a principal in the law firm of Turner, Gerstenfeld, Wilk & Tigerman. In said capacity, I am responsible for the defense of the within action on behalf of defendants AUTHOR SERVICES, INC. ("ASI") and BRIDGE PUBLICATIONS, INC. ("BPI"). Furthermore, I was the attorney for ASI with regard to certain settlements in which ASI was a settling party which are referred to in these moving papers. Accordingly, all of the following information is of my own personal knowledge and I am available and competent to personally testify thereto if necessary.

2. I was personally involved in the settlements which are referred to in these moving papers which transpired some two and one-half years ago. Those settlements concerned well over a dozen plaintiff litigants as well as various Church of Scientology entities and other third parties sued as defendants. Those settlements also concerned ASI, a defendant in this matter, which was a co-defendant in one of those many actions. The settlement negotiations which took place stretched over the course of several months, culminating in a multi-week session in a hotel in the city of Los Angeles where most of the lawyers (and some of the parties) involved in litigation met extensively.

3. Settlement negotiations, which were not supervised by any court, were arduous and, as is often the case in these

instances, sometimes contentious. However, a "universal settlement" was ultimately entered into between the numerous parties. The universal settlement provided for non-disclosure of all facts underlying the litigation as well as non-disclosure of the terms of the settlements themselves. **The non-disclosure obligations were a key part of the settlement agreements insisted upon by all parties involved.**

4. The contractual non-disclosure provisions were the one issue which was not debated by any of the parties or attorneys involved. In the last two and one half (2-1/2) years the settlements have been carried out in good faith by all parties. I consider my contribution, as well as the contribution of the other attorneys involved in the settlements, to have been of great benefit to this and other Courts in that it alleviated literally months upon months of trial time which would have been necessary had the settlements not been properly effected.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2 day of March 1989, at Beverly Hills, California.

Lawrence E. Heller
Declarant

DECLARATION OF HOWARD D. SCHOMER

I, Howard D. Schomer (also known as Homer Schomer), declare as follows:

1) For a number of years I was involved in intense litigation with various Church of Scientology entities. I was represented by Michael J. Flynn, a Boston attorney, as well as the law firm of Contos & Bunch, A California law firm.

2) Approximately two and one half years ago my lawsuit was settled along with various other lawsuits and claims which were at that same time pending against Scientology. The settlements, to my knowledge, also included litigation that Scientology entities had pending against various persons and entities.

3) I am aware of the fact that the settlement negotiations stretched over a lengthy period of time and involved numerous attorneys, including those representing me. Since the time of the settlement there have been no problems between Scientology and me, we each appear to have gone our own ways. The other parties who I know, who settled their matters with Scientology at the time of my settlement, to my knowledge have also been at peace with Scientology.

4) I was recently subpoenaed to a deposition by BENT CORYDON in this case. I am not sure why I was subpoenaed since I have virtually no knowledge concerning Mr. Corydon

and know nothing of his experiences within the Church of Scientology.

5) I believe I met Mr. Corydon on one brief occasion while we were both in the Church of Scientology, either in Florida or in Los Angeles. The meeting consisted of no more than an introduction and a quick exchange of social pleasantries.

6) I have no knowledge concerning Mr. Corydon's experiences within the Church nor do I know anything about what transpired between Mr. Corydon and Scientology after he left the Church (which I am told was prior to the time I left Scientology in December of 1982).

7) Since I left Scientology I have spoken to Mr. Corydon on one or two occasions when he telephoned me asking me for information that he could use in a book he was then writing about Scientology.* This was in late 1986, a number of years after both Mr. Corydon and I had left Scientology.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of October, 1989 at Pamona, California.

Howard Schomer
HOWARD SCHOMER
Declarant

* HE ALSO CAME TO MY APARTMENT APPROX DEC/1986 WHERE HE TAPED AN INTERVIEW FOR FACTS FOR his book FOR APPROX 2 HOURS. Howard Schomer
10-28-89

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 8383 Wilshire Boulevard, Suite 510, Beverly Hills, California 90211.

On November 1, 1989, I served the foregoing document described as NOTICE OF MOTION AND MOTION OF DEFENDANT AUTHOR SERVICES, INC. TO DELAY OR PREVENT THE TAKING OF CERTAIN THIRD PARTY DEPOSITIONS BY PLAINTIFF; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF LAWRENCE E. HELLER AND HOWARD SCHOMER IN SUPPORT THEREOF by placing [ ] the original [x] a true copy thereof enclosed in sealed envelopes addressed as follows:

Toby Plevin, Esq., 6380 Wilshire Boulevard,
Suite 1600, Los Angeles, CA 90048

William Dresher, Esq., Wyman, Bautzer, Kuchel & Silbert
Two Century Plaza, 14th Floor,
2029 Century Park East, Los Angeles, CA 90067

Kendrick Moxon, Esq., Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028

[ ] BY MAIL - I deposited such envelope in the mail at Beverly Hills, California. The envelope was mailed with postage thereon fully prepaid as follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Beverly Hills, California in the ordinary cause of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[x] BY PERSONAL SERVICE - I delivered such an envelope by hand to the offices of the addressee.

[x] (State) I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 1, 1989, at Beverly Hills, California.

Susan J. Davis

Susan J. Davis

After an initial 10% of the income has been deducted for research, and an additional 10% taken to operate as a reserve, the remaining 80% is allocated into the categories of 31% to salaries, 4% for payroll deductions, 17% for building expenses, 21% for organizational expenses and 7% to commissions.

It is ridiculous to think that the Church's Flag Land Base, which is composed of hundreds of staff in a number of different buildings, and which delivers Scientology counselling and training to thousands of parishioners on a weekly basis, would be able to cover its expenses using only 10 percent of its weekly income.

Corydon goes on to say that tens of millions of dollars paid for services delivered to Church members at the Flag organization were channeled into Hubbard's personal accounts.

There is no documentation to support this statement by Corydon. In fact, his claims are based on nothing more than hearsay, rumor and lies gathered from a small cabal of thieves, perjurers and disreputable sources.

Mr. Hubbard hardly needed any income from the Church of Scientology. As one of the most prolific and popular authors in history, his income speaks for itself. L. Ron Hubbard's career as a writer spanned more than 50 years, with over 22 million copies of his fiction books sold.

Since October 1982, there have been over 1,900,000 of Mr. Hubbard's fiction books sold. In 1985 and 1986 alone, 3,907,522 nonfiction books by L. Ron Hubbard were sold.

An unprecedented event in publishing history, L. Ron Hubbard's "Dianetics: The Modern Science of Mental Health," originally published in 1950 and carried on the prestigious New York Times best-seller list, returned to the New York Times list for over six months in 1986 and 1987. Mr. Hubbard's income from the royalties on sales of his extremely popular books is self-explanatory.

Not only was Mr. Hubbard not making his income from the Church of Scientology, but he also gave the majority of his estate to the Church in his will.

COMBAT IN WORLD WAR II

John Sanborne, one of Corydon's main sources for this book, claims that L. Ron Hubbard had not been in combat during World War II.

However, an Action Report from May 1943 shows that L. Ron Hubbard, as the Commanding Officer of the submarine chaser PC 815, engaged in direct combat with two submarines off the coast of Oregon.

TRAVELS IN ASIA

Gerry Armstrong, another one of Corydon's main sources in the book, claims that L. Ron Hubbard " ... did not spend several years throughout Asia," and that Mr. Hubbard's total time in Asia was "a few weeks."

L. Ron Hubbard, in fact, was in Asia and the Orient several times during a three-year period, during which his travels were quite extensive.

Chapter 8

HOMER SCHOMER

Homer Schomer is a good example of the discreditable sources Corydon used for his book.

Schomer, a former Scientologist and staff member, was proven to be a perjurer during his testimony in a court case between the Church of Scientology and Julie Christofferson in 1985.

Homer had testified in 1984 in a court case brought by the Church of Scientology against Gerald Armstrong (a former staff member who had stolen valuable documents from Church archives).

In the Christofferson case, Schomer admitted to having committed perjury in the previous Armstrong case.

In 1984, Schomer also attempted to extort money from the Church of Scientology. In sworn affidavits, two Church staff members testified that when they met with Schomer in his own home in an attempt to help him reconcile his differences with the Church, Schomer offered to "stay quiet" about information that he felt could be damaging to the Church, if the Church paid him the exorbitant sum of $200,000.00.

Schomer was also involved in passing stolen sacred and confidential Church scriptures to the Los Angeles law firm of Charles O'Reilly. In a hearing in the Church of Scientology's lawsuit on this matter, it was clearly shown that Schomer had provided copies of the stolen materials to O'Reilly's firm.

The materials were originally stolen in Denmark by an apostate former member of the Church and were then disseminated to the United States.

In the above-mentioned hearing, the judge precluded any further use and dissemination of the stolen Church scriptures. (See chapter entitled "David Mayo.")

Schomer's record as a perjurer, extortionist and thief has been disregarded by Corydon, who apparently could find no better "sources" for his book.

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Chapter 14

REHABILITATION PROJECT FORCE

Corydon devotes a chapter in his book to the Church of Scientology's Rehabilitation Project Force (RPF). In this chapter, he includes such statements as the claim that individuals on the RPF are "slaves who eat scraps" and have "the look of hunted animals."

This perhaps would be a fine piece of sensational writing for the National Enquirer, but such a description of the Rehabilitation Project Force is a complete fabrication.

Corydon has used a description of the RPF provided by Gerry Armstrong, among others. Armstrong's description in this book, however, is completely contrary to his own previous sworn affidavit about the RPF.

(Gerry Armstrong's description of the RPF in Corydon's book can also be viewed in light of Armstrong's numerous false claims and lies on other subject matters. See chapter on Corydon as an "author" for further information on Gerry Armstrong's incompetence as a researcher.)

The Rehabilitation Project Force, as its name indicates, is a program with the purpose of rehabilitating individuals.

It is not uncommon for executives in high-pressure jobs in the business world to suffer from "burnout" and be totally unable to continue with their jobs. In the Sea Organization, if an individual is unable to keep up with the demands of his job or if he continually transgresses against the policies of his group, steps are taken to help the person so that he again becomes a contributing member of his organization. There are many different actions and programs which aide a Church staff member in this way. One of these is the Rehabilitation Project Force.

Individuals who go to the RPF do so of their own free will. If someone chooses not to do the RPF, he is free to leave. The fact is that those who are desirous of working in the Church and are interested in improving themselves (which is the very essence of what Scientology is all about), join the Rehabilitation Project Force by their own choice.

Individuals on the Rehabilitation Project Force receive extensive spiritual counseling. In exchange, they do work such as landscaping, building renovations and so forth.

making religious corporation registered in California since 1954. My duties for the past 5 years have required that I work closely with and assist Church counsel in all phases of litigation in the United States, including the Church's litigation with Gerald D. Armstrong.

2. I have caused to be reviewed a manuscript of approximately 375 pages and entitled "Bare-Faced Messiah" by Russell Miller. There is now produced and shown to me marked "KDL 1" a copy of Mr. Miller's manuscript. This book contains direct quotes from unpublished writings of L. Ron Hubbard including personal diaries. From reading this manuscript it is self-evident that the unpublished quotes could not have been included without having the documents at hand. These documents could not have been obtained except by unauthorised access to them.

3. Mr. Miller in his publication goes into a rather detailed explanation as to how Gerry Armstrong, an ex-employee of the Church, had acquired these private writings of Mr. Hubbard's while working as a researcher on a biography of Mr. Hubbard. My affidavit will explain how these unpublished writings could only have come from Gerry Armstrong in breach of his agreements to keep these private writings absolutely confidential.

4. Gerald Armstrong was an employee of the Church from February 1969 to December 1981. There is now produced and shown to me marked "KDL 2", as evidence of Mr. Armstrong's employment, a copy of the W-2 Wage and Tax Statements issued by the Church for Mr. Armstrong during the years 1977 and 1978. There is also now produced and shown to me marked "KDL 3" a copy of an Affidavit executed by Mr. Armstrong on April 12, 1980, in which Mr. Armstrong affirmed at paragraph 1 that he was employed by the Church.

5. On January 8, 1980, Mr. Armstrong requested permission from the Founder of the religion of Scientology, Mr. L. Ron Hubbard, to be allowed to create a position within the Church which would compile, protect and preserve Mr. Hubbard's personal papers. Mr. Armstrong informed Mr. Hubbard that his purpose in making the request was because the position would require that "the person doing such would have to have your trust". There is produced and shown to me marked "KDL 4" a copy of Mr. Armstrong's request of January 8, 1980 to Mr. Hubbard. As the Court will see, Mr. Armstrong's request was copied to his supervisors within the Church in the upper right hand corner of the first page.

6. Upon Mr. Armstrong's request, the Church then allowed Mr. Armstrong to create a position within a division of the Church known as the "Personal Office of LRH". There is now

produced and shown to me marked "KDL 5" a copy of the Fictitious Business Name Statement of March 12, 1980 which established the Personal Office of LRH as a fictitious name for the Church of Scientology of California. Mr. Armstrong's new position was entitled "Senior LRH Personal Public Relations Officer Researcher" ("Snr R Pers PRO Researcher"). There is now produced and shown to me marked "KDL 6" a copy of the dispatch distributed by Mr. Armstrong on February 3, 1980, announcing his assumption of the new position.

7. As the Court will see, Mr. Armstrong was aware of his obligation to hold confidential the information he obtained as an employee of the Church long before he assumed the position of Researcher in 1980 and he continued to remain aware of this obligation while holding that position. There is now produced and shown to me marked "KDL 7" a copy of the Non-Disclosure and Release Bond executed by Mr. Armstrong on March 18, 1977 in which Mr. Armstrong acknowledged his employment with the Church and that any information or knowledge obtained by him as an employee was done so in a relationship of trust and confidence and imparted to him a fiduciary duty to the Church. There is also now produced and shown to me marked "KDL 8" a copy of the dispatch dated February 22, 1980 and written by Mr. Armstrong, in which he describes the value of the materials which he was collecting

and requesting increased security arrangements for the office in which those materials were to be stored. As the Court will see, Mr. Armstrong stated that he would sleep in the office to ensure the safety of those documents until such time as the security arrangements had been enhanced. There is now also produced and shown to me marked "KDL 9" a dispatch by Mr. Armstrong of May 14, 1980, in which he stated that other Church staff were "extremely reluctant" to furnish him with personal information about Mr. Hubbard's family and friends, and in which Mr. Armstrong obtained access to such information after assuring his fellow staff "as to the confidentiality these files are given".

8. On October 30, 1980, AOSH DK Publications and author Omar V. Garrison entered into an Agreement under which Mr. Garrison was to engage in the writing of a biography of Mr. Hubbard. There is now produced and shown to me marked "KDL 10" a copy of the agreement between Mr. Garrison and AOSH DK Publications. Shortly thereafter, AOSH DK Publications requested assistance from the Church in executing the terms of its agreement with Mr. Garrison, and specifically the assignment of a Church employee who would work as an assistant to Mr. Garrison and "assist in research and office duties as needed". There is now produced and shown to me marked "KDL 11" a copy of the letter of November 14, 1980 sent by the Secretary of the Board for AOSH DK Publications

to the Board of Directors for the Church. As the Court will see, the Board of Directors for the Church confirmed the agreement with the terms of the letter, and later ratified its agreement in a written Resolution. There is now produced and shown to me marked "KDL 12" a copy of the Resolution adopted by the Board of Directors of the Church in adopting the agreements proposed by AOSH DK Publications. Mr. Armstrong was the Church employee thereafter provided to Mr. Garrison pursuant to this agreement.

9. Mr. Armstrong assisted Mr. Garrison as a researcher and office assistant until he voluntarily terminated his employment with the Church on December 12, 1981. As the Court will see, by the time Mr. Armstrong left the Church he had furnished Mr. Garrison with "a great deal of materials" which were in Mr. Garrison's possession. There is now produced and shown to me marked "KDL 13" a copy of Mr. Armstrong's letter of December 12, 1981, in which he resigned his position in the Church.

10. On August 2, 1982, the Church brought a lawsuit against Gerald Armstrong, under two causes of action, namely, conversion and breach of fiduciary relationship, in respect of which the Church sought injunctive relief and imposition of a constructive trust. There is now produced and shown to me marked "KDL 14" a true and accurate copy of the

complaint. On August 24, 1982, the Honourable Judge John L. Cole of the Los Angeles County Superior Court issued a Temporary Restraining Order requiring Mr. Armstrong, his counsel, and all other persons participating or working in concert with Mr. Armstrong to surrender to the Clerk of the Los Angeles Superior Court all of the documents taken by Mr. Armstrong. There is now produced and shown to me marked "KDL 15" a copy of the Temporary Restraining Order. As the Court will see, the terms of that Order specified that the documents surrendered to the Court would remain under seal, available only to the parties in the action and only for purposes of that action.

11. On October 4, 1982, the Honourable Judge John L. Cole issued an order superseding the Temporary Restraining Order, but which maintained the sealing and confidentiality provisions of his prior Order pending resolution of the matter. There is now produced and shown to me marked "KDL 16" a copy of the Preliminary Injunction dated October 4, 1982.

12. On June 24, 1983 after several disputes over the writing of the LRH biography, Mr. Garrison entered into a Settlement Agreement with New Era Publications, the successor corporation to AOSH DK Publications. There is now produced and shown to me marked "KDL 17" a copy of the

public settlement agreement, in which Mr. Garrison acknowledged that he returned all copies of the materials furnished to him to the Church of Scientology International and that he has no right of possession to any of those materials.

13. Trial was heard on the Church's suit against Mr. Armstrong from May 3, 1984 through June 8, 1984. On June 20, 1984 the trial court issued a Memorandum of Intended Decision which, on July 20, 1984, was held to be the Statement of Decision. As the Court will see, the trial court ruled that the Church had made out a prima facie case against Mr. Armstrong for conversion, breach of confidence, breach of fiduciary relationship and invasion of privacy, but that Mr. Armstrong was justified in having taken the materials. The trial court also ordered certain of the previously sealed exhibits to remain under seal while unsealing the majority of the previously sealed trial exhibits. The trial court also ordered that the documents surrendered to the Clerk of the Court pursuant to the Temporary Restraining Order of August 1982 which had not been introduced during trial were to remain under seal pending trial of a separate suit brought by Mr. Armstrong against the Church. There is now produced and shown to me marked "KDL 18" a true and accurate copy of the Memorandum of Intended Decision dated June 20, 1984. This decision is

currently still on appeal.

14. Following the trial, the Church sought and obtained a series of sealing orders which effectively maintained the sealing of the trial exhibits right up to and including December 1986. There is now produced and shown to me marked "KDL 19" true and accurate copies of the sealing orders. In December 1986, as the result of a settlement agreement reached between the Church and Mr. Armstrong in relation to Mr. Armstrong's cross-complaint, the trial court ordered the documents be returned to the Church. There is now produced and shown to me marked "KDL 20" a true and accurate copy of the December 11, 1986 Order issued by the trial court allowing for the return of the trial exhibits to the Church. The trial exhibits were then returned to the Church without their ever having been made available by the court to the general public for copying.

15. As the Court will see in reviewing "KDL 20", referred to immediately above, the settlement agreement entered into by the Church and Mr. Armstrong did not affect the Church's appeal of the trial court's decision in its case against Mr. Armstrong. In addition to seeking the numerous temporary sealing orders described above following the 1984 trial, the Church had also initiated proceedings to appeal the trial court's July 20, 1984 ruling. That appeal is still pending

with the California Court of Appeal and the action is still very much alive.

16. As stated above I have reviewed the manuscript by Russell Miller entitled "Bare-Faced Messiah". I have also caused to be reviewed certain documents returned to the Church by the court in December 1986 after the settlement with Mr. Armstrong. Mr. Miller's manuscript contains a number of direct quotes taken from these documents which were held under seal by the court.

17. At page 24 of the manuscript, Mr. Miller both refers to information contained in, and quotes directly from, Mr. Hubbard's Boy Scout diary. This diary was never introduced at trial of the action against Mr. Armstrong and so has never been unsealed nor made available to the general public.

18. At pages 45 to 46 of the manuscript, a letter from Mr. Hubbard's mother to Mr. Hubbard is quoted. This document has never been made available to the general public.

19. At pages 81 to 82 of the manuscript, large portions of a letter from Mr. Hubbard to his wife, Polly, are quoted. That letter, which I believe to be dated July 21, 1938, was

taken by Mr. Armstrong and then surrendered to the Clerk of the Court in August 1982. It was never introduced at trial in the action against Mr. Armstrong, and so has never been unsealed or made available to the general public.

20. At page 90 of the manuscript, a sentence from a one page letter from Mr. Hubbard to the Cape Cod Instrument Company is quoted. That letter was taken by Mr. Armstrong as part of a larger compilation of documents concerning a cruise taken by Mr. Hubbard, and was then surrendered to the Clerk of the Court in August 1982. It was never introduced at trial in the action against Armstrong, and so has never been unsealed or made available to the general public.

21. At pages 107 to 108 of the manuscript, several sentences written by Mr. Hubbard on January 6, 1944 in a Journal he kept as an officer in the U.S. Navy are quoted. That Journal was taken by Mr. Armstrong and then surrendered to the Clerk of the Court in August 1982. It was never introduced at trial in the action against Mr. Armstrong and so has never been unsealed or made available to the general public.

22. At pages 23 to 25, 29 to 34 and 37 to 45 of the manuscript, numerous passages are directly quoted from three diaries kept by Mr. Hubbard between 1927 and 1929.

These diaries primarily concern several trips made by Mr. Hubbard to the Orient, including Japan, China and Hong Kong. These have never been available to the general public.

23. On page 258 of the manuscript, Mr. Miller both quotes from and gives information from a "Tentative Constitution for Rhodesia", written by Mr. Hubbard. This document has never been available to the general public.

24. Mr. Armstrong testified during a deposition taken on August 1, 1986 that he had met Mr. Miller in approximately May of 1986. Mr. Armstrong indicated that not only did he believe that Mr. Miller had archival documents, but also that Mr. Miller was aware of the litigation arising out of Mr. Armstrong's breach of fiduciary duty to the Church and would have had or read documents about the Church's suit against him in this respect. Mr. Armstrong also indicated that he had furnished Mr. Miller with documents and information, although he did not identify which documents he had provided to Mr. Miller. There is now produced and shown to me marked "KDL 21" a true and accurate copy of Mr. Armstrong's testimony of August 1, 1986 concerning his contact with Mr. Miller.

25. Mr. Miller, by his own admission, is fully aware that the Church issued legal proceedings against Mr. Armstrong

for removal of Mr. Hubbard's confidential documents from the Church while Mr. Armstrong was employed by the Church. Mr. Miller is also fully aware that the Church has appealed the decision of the Los Angeles Superior Court, and that these confidential documents, the contents of some of which Mr. Miller is now seeking to publish, still remained under court seal when he obtained them from Mr. Armstrong.

26. For the reasons stated above, I know that the documents quoted and paraphrased in Mr. Miller's manuscript were not available to him from the court. I also know that Mr. Armstrong refused to obey an order of the court, and retained possession of documents which he had been ordered to surrender to the court for safekeeping under seal. I also know that Mr. Armstrong had contact with Mr. Miller as early as mid-1986. Based on these facts, it is my belief that the documents quoted and paraphrased in Mr. Miller's manuscript were furnished to Mr. Miller by Mr. Armstrong, and that they could not have been furnished to Mr. Miller by anyone else as no-one else other than Mr. Armstrong had access to these documents. Given these facts I am greatly concerned that Mr. Miller may still be in possession of copies of the said documents and may disseminate confidential information contained therein by distributing copies of the said documents to third parties or in some other manner impart the information contained therein to

such third parties.

27. I have read the affidavit written by David Morton Ziff and understand that Mr. Ziff's affidavit states that he witnessed the taking of a photograph of L. Ron Hubbard on the ship "Apollo" in Portugal in 1970. Mr. Ziff attaches to his affidavit a photograph of L. Ron Hubbard and states that the photograph was taken by Sylvia Calhoun, who at the time was employed by the Church as the "LRH Photographer". This unpublished photograph of L. Ron Hubbard is owned by the Church and the negative of the photograph is in the possession of the Church. There is now produced and shown to me marked "KDL 22" a copy of a photograph of L. Ron Hubbard which is the same photograph of Mr. Hubbard taken by Sylvia Calhoun on the ship Apollo in 1970 as described in the affidavit of Mr. Ziff.

28. There is now produced and shown to me marked "KDL 23" a copy of an advertisement which appeared in the publication "Bookseller", Issue number 4256, dated July 17, 1987. This advertisement depicts the forthcoming book "Bare-Faced Messiah, the True Story of L. Ron Hubbard" and includes a picture of L. Ron Hubbard, which is the same photograph of L. Ron Hubbard marked "KDL 22" which was taken by Sylvia

Calhoun and the copyright in which is owned by the Church as described above. The use of this photograph of L. Ron Hubbard in the advertisement in "Bookseller" is unauthorised and hence an infringement of the copyright in this photograph owned by the Church. I also believe that the photograph of L. Ron Hubbard and design surrounding it in the magazine advertisement in "Bookseller" is a depiction of the front of the dust cover of Russell Miller's forthcoming book. The use of Mr. Hubbard's photograph on the front of the dust cover is likewise unauthorised and an infringement of the Church's copyright in the afore-mentioned photograph of L. Ron Hubbard.

29. I have read the affidavit written by Julie Fisher and understand that Mrs. Fisher's affidavit states that she was one of the individuals who was photographed with L. Ron Hubbard in the Dutch Antilles in late 1974 and early 1975. Mrs. Fisher attaches to her affidavit a photograph of herself, other Church staff and L. Ron Hubbard, and states that the photograph was taken by Maude Castillo, who at the time was employed by the Church as the "LRH photographer". Maude Castillo took this photograph of L. Ron Hubbard in her capacity as a photographer for the Church. The copyright in this unpublished photograph of L. Ron Hubbard is owned by the Church of Scientology of California and the negative of the photograph is in the possession of the Church. There is

now produced and shown to me marked "KDL 24" a copy of a photograph of L. Ron Hubbard which is the same photograph of Mr. Hubbard taken by Maude Castillo in late 1974 and early 1975 as described in the affidavit of Mrs. Julie Fisher and produced there as Exhibit "JT 1".

30. There is now produced and shown to me marked "KDL 25" a copy of a page from Mr. Miller's manuscript. This page includes a photograph depicting L. Ron Hubbard and Church staff, and is the same photograph of Mr. Hubbard marked "KDL 24" that was taken by Maude Castillo and which is owned by the Church as described above. The planned use of this photograph of L. Ron Hubbard by Mr. Miller is unauthorised and hence an infringement of the copyright in this photograph owned by the Church of Scientology of California.

31. The Church has spent thousands of man hours and millions of dollars since 1982 in order to uphold the duty it owed to Mr. Hubbard as the bailee for his materials when they were taken by Mr. Armstrong. If Mr. Miller's manuscript is published with the direct quotations and paraphrases taken from Mr. Hubbard's personal documents, it will completely frustrate the purpose of the appeal by the Church now pending before the Los Angeles Superior Court by making public the very documents whose confidentiality the Church and the Courts have protected for the past five

years.

32. If Mr. Miller is allowed to publish his manuscript containing very personal and intimate details about Mr. L. Ron Hubbard with his photograph referred to in paragraph 29 above as well as the photograph on the dust cover, the buyers may very well at first glance be led to believe that the book has been supported or approved by the Church. Nothing could be further from the truth as the book has been written entirely without the Church's participation.

33. The Church is engaged in the preparations for an official biography of Mr. L. Ron Hubbard. Should Mr. Miller be permitted to use the hitherto unpublished photographs hereinbefore referred to at paragraphs 27 and 29, the Church would be deprived of its first publication rights in respect of the said photographs.

34. If Mr. Miller is allowed to publish the confidential information contained in Mr. Hubbard's personal and private documents, the confidentiality of that information will be forever lost. The Church will be irreparably harmed, without any adequate remedy in monetary terms, as the Court cannot order the bell be unrung once it has been rung, or determine how far the sound has reached.

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35. For the reasons I have set out in paragraphs 33 to 36 above, I verily believe that damages would not be an adequate remedy and I ask this Honourable Court to grant an injunction in the terms sought to restrain publication of Mr. Miller's book.

36. I understand that, under the law of the United Kingdom as well as under the laws of the United States, it is necessary to protect the person against whom an injunction is sought by giving an undertaking to cover any damages that might result should the injunction be issued and later be found to have been wrongly issued. The Church can and will make good any such undertaking of monetary damages that might be required. The last published accounts of the Church show a net worth of approximately $14,000,000. There is now produced and shown to me marked "KDL 26" a copy of the balance sheet as at November 30, 1986.

SWORN at Saint Hill)
Manor, East Grinstead)
West Sussex)
)

Kenneth David Long

This 5th day of October 1987

Before me,

S. M. BIRD.
A Solicitor.

RESWORN at 23/27)
Fleet Street)
London EC4)
this 7th day of)
October 1987)

Kenneth David Long

Before me,

A Solicitor:

KDLO

√ KT2 6028

Wage and Tax Statement 1977

CHURCH OF SCIENTOLOGY OF CALIFORNIA
5930 FRANKLIN AVENUE
HOLLYWOOD, CALIF. 90028
95-6099543 205-0917-0

Copy 1 For State, City, or Local Tax Dept.

☐

265-81-2049

NONE

346.00

Gerald David Armstrong
210 S. Fort Harrison
Clearwater, Florida
33516

---

15 222 205-0919-0

CHURCH OF SCIENTOLOGY OF
CALIFORNIA-5930 FRANKLIN AVE.
HOLLYWOOD, CA 90028

95-6099543

Make No Entry Here

265 81 2049 NONE 34.40

GERALD DAVID ARMSTRONG NO

210 South Fort Harrison Ave.
Clearwater, Florida, 33516

Wage and Tax Statement 1978

Copy 1 For State, City, or Local Tax Department
Employee's and employer's copy compared ☐

Form W-2

Department of the Treasury—Internal Revenue Service

TYPE OF HEARING Trial
CASE NO C420153
Deft EXH. NO. V
ADMITTED IN EVIDENCE
DATE 5-30-84
JOHN J. CORCORAN, COUNTY CLERK
BY DEPUTY

KT 2

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Burden
KD

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[redacted]

State of California)
County of Los Angeles) ss

AFFIDAVIT

I Gerry Armstrong, of Los Angeles California, hereby depose and state the following:

1. That I am a member of the Church of Scientology of California and am employed by this Church.

2. That from July 1976 to December 1977 I was working within a section of the Church known as the Rehabilitation Project Force hereinafter referred to as the RPF at the Church of Scientology of California located in Clearwater Florida.

That from August 1977 up through November 1977 I had personally known and had the opportunity to observe an individual known to me as Tonja Burden.

4. That during this period of August 1977 to November 1977 Tonja Burden was also working in the RPF at the Church located in Clearwater Florida.

5. That I have read an affidavit signed by Tonja Burden dated 25 January 1980, in which she describes living and working conditions Tonja claims to have existed in the RPF during the time period of August 1977 to November 1977.

6. On page 9 of Tonja Burden's affidavit she swears that: "In the RPF you were labeled 'treasonous'..." I personally know that no one was labeled 'treasonous' because they were in the RPF, including Tonja Burden.

7. On page 9 and 10 of Tonja Burden's affidavit she swears that: "and forced to work 19 hours a day, 7 days a week" in regards to the schedule she alleged to have had to maintain in the RPF. I personally know that neither Tonja Burden nor anyone else worked a schedule of 19 hours a day for 7 days a week. The actual schedule of the RPF was as follows; 8 hours of work a day; 7½ hours of sleep; ½hour for each meal break three times a day; ½hour for hygiene; ½hour for a meeting of all individuals in the RPF;and 6 hours devoted to spiritual counseling or training to be able to administer spiritual counseling to another.This was the schedule that I personally observed Tonja Burden adhere to while she was in the RPF from August 1977 to November 1977.

8. On page 10 of Tonja Burden's affidavit she swears that: "and often times received only 'rice and beans' and water" in regards to the food she alleged to have received. I personally know that Tonja Burden never ate only rice and beans and water while on the RPF. I also personally know that no one else ate only rice and beans and water while Tonja Burden was on the RPF from August 1977 to November 1977.

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[redacted]

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KDL7

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NONDISCLOSURE AND RELEASE

BOND

Know All Men by These Presents, that Gerald David Armstrong of Clearwater Florida (herinafter called "the Obligor"), is held and firmly bound to the Church of Scientology of California (hereinafter called "the Church"), a corporation its principal place of business being Clearwater, Florida, in the sum of Ten Thousand Dollars ($10,000.00), to be paid to the said Church, its executors, administrators, or assigns, as liquidated damages and not as a penalty, for the payment of which sum, well and truly to be made, the Obligor hereby binds himself, his heirs, executors, administrators and assigns firmly by these presents.

WHEREAS the Church has hired or otherwise employed said Obligor;

AND WHEREAS, Obligor is employed by the Church and is receiving the services and ministrations of the Church;

AND WHEREAS, Obligor wishes to remain in the services of the Church and wishes to continue receiving compensation for work rendered by him/her in service of the Church;

NOW THEREFORE the above written obligation is conditioned to be void in case the Obligor shall hereafter

EXHIBIT B

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6031

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
DISTRICT OF MASSACHUSETTS
CASE NO. CV8504853R (MAX)
MBD 86-109

MICHAEL J. FLYNN,
Plaintiff,

vs.

CHURCH OF SCIENTOLOGY, ET AL,
Defendants.

CONTINUING DEPOSITION OF GERALD ARMSTRONG taken pursuant to Notice under the Massachusetts Rules of Civil Procedure, before Kailie M. Hagman, a Notary Public and Certified Shorthand Reporter in and for the Commonwealth of Massachusetts at the offices of Geller & Weinberg, 80 Boylston Street, Boston, Massachusetts, on August 1, 1986, commencing at 10:45 a.m.

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APPEARANCES:

MICHAEL A. TABB, ESQ.
Flynn, Joyce & Sheridan
400 Atlantic Avenue
Boston, MA 02210

ERIC D. BLUMENSON, ESQ.
56 Temple Street
Boston, MA 02114

ALSO PRESENT:
Ken Long
David Butterworth
Mike St Amand

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Quality Court Reporting Services Since 1971

Q. Okay. Okay. Have you ever met Russell Miller?

A. Yes.

Q. And who is he?

A. Russell Miller is a human male, I guess about -- I think he is English. Certainly has an English type of accent. He is probably in his -- I would say -- 40's. He was or is connected with a newspaper, that may be the London Sunday Times. He could be an agent of the organization. He could be an agent of the federal government. He could be working for the KGB or he could be none of the above, but at least I recognize the name.

Q. When you met with him, did you think he might be an agent for one of the organizations you just named?

A. I considered that he might be an agent of the organization.

Q. What about for the KGB?

A. That seemed like less of a possibility. That seemed that the KGB was less interested in --

Q. What about for the government?

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A. Well, that possibility exerted -- maybe for Her Majesty's Government.

Q. Why did you meet with Russell Miller?

A. Well, because I'll meet with anyone who asks to meet with me.

Q. When did you meet with him?

A. I would say approximately two months ago.

Q. How many meetings have you had with him?

A. Two or three. I believe one, although we may have -- he may have been in the office and he may have fallen out of my view, at some point talked to someone else or gone to the head or something, but my recollection is that there was one day, certainly time in which I had a lengthy conversation with him.

Q. And what was the date?

A. I couldn't tell you. It was definitely a work day and it was around noon.

Q. In the law office?

A. I believe we started there and then we went to lunch.

Q. And where did you go to lunch?

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A. A little cafe, just the other side of the --

Q. How did you happen to meet with Russell Miller? Who contacted whom?

A. Well, he certainly contacted me. I didn't know who he was until he called or you know, he originated the whole thing.

Q. What is -- what was the first contact you had with him?

A. Well, in that I met him only the one time that I recall, I would have to say that the contact with him was telephonics.

Q. And what -- he called you, correct?

A. Well, I have never to my knowledge or recollection ever called him, and if I did call him, it was only to return his call.

Q. So, that's -- what was the --

MR. TABB: Before we go on with this line of questioning, Mr. Blumenson, does this have any relevance to the Flynn case?

MR. BLUMENSON: Yes. Calculated to lead to the discovery of admissible evidence.

MR. TABB: Are we going to

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go into every conversation Gerry Armstrong had since December 1981?

MR. BLUMENSON: We have a stipulation that served the purpose of saving time if that's your concern, Mike.

MR. TABB: You are belly aching about loosing a half an hour and you ask irrelevant questions. We will get some of --

MR. BLUMENSON: Okay. Let me be the judge.

BY MR. BLUMENSON:

Q. Now, what was the content of the first phone call? What do you recall being stated in the telephonic conversation?

MR. TABB: Unless you can show me some relevance to this case, I'm not going to let you go into every conversation Gerald Armstrong has had with everyone over the last four years. It is not relevant. It is invasion of Mr. Armstrong's privacy. It may be an invasion of the First Amendment, and I don't think you are entitled to have it.

BY MR. BLUMENSON:

Q. What was your purposes in meeting with

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Mr. Miller?

A. He asked to meet with me.

Q. And why did he want to meet with you?

A. He wanted to talk to me.

Q. About?

A. I would say that most of his conversation had to do with L Ron Hubbard.

Q. All right. Was he writing a book?

A. I'm not sure if he was at the time or if the idea that he was working on got changed into a book or if he is indeed doing a book or if he has done a book. I'm not aware of any of those things.

Q. Did you give him documents?

A. Well, I don't know if I did, and I rather doubt it. I may have at the request of Mr. Flynn or someone. I don't know what.

Q. You do recall that he probably received some documents from the office though?

A. Yes. I can't tell you -- I can't tell you what, but yes, he would have gotten some.

Q. And do you recall the identity of any of these documents at all?

A. No. I couldn't identify them now.

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Q. And --

A. He had tons. He had transcripts and you know, I think the -- probably a lot of it was, there is this standard pack of documents, you know, a lot of press and junk. Boy, I don't have an exact recollection.

Q. And did you talk about Eugene Ingram with Mr. Miller?

A. Ingram?

Q. Yes.

A. Well, if he would have asked about Ingram, I certainly would have.

Q. And you were willing to meet with anyone from the press, isn't that correct?

A. Not on every occasion but just about. If someone says I am willing to meet with you, unless that it might be a, you know, problem, an ethical problem and I'm willing to meet with these guys. So, you know, it is that kind of a thing. Not everyone in the world is beating down my door to talk to me.

Q. Would you say that you have talked to over 50 reporters since you left the Church?

A. No. I think 50 would be too many.

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Q. Between 30 and 50?

A. I don't know. Maybe I could get up to 30, but it would really be -- you are giving awfully short shifts to some of those reporters.

Q. Have you ever turned down a request by a reporter to talk to you?

A. I may have. You know, there have been times when I just was so, you know, the press is not particularly, you know, they are not my favorite people.

Q. Do you believe that you have gotten a fair shake from -- strike that.

Have you ever contacted the press yourself?

A. I think so. I think that, yes, definitely. There was one time in Florida -- no, not in Florida. No, it was in Oregon when I contacted -- this got on the radio and he just went on this tirade against -- we're going to get Judge Breckenridge, and I tried to call in, it was KABC, it was a network. I picked it up in the Michael Jackson Show.

That's, you know -- and

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there may be another -- couple other times. There may be times when I called them because I wanted to correct something, but generally, I don't go out of my way to, you know --

Q. Did you have any conversation with Russell Miller about the archival documents?

A. I probably did. You know, that's clearly -- I mean, I believe he would have documents, had or read or knew about my case by that time. He was sort of aware of Gerald Armstrong's part in the whole Scientological enigma or problem or situation or whatever it is.

Q. Do you recall what or can you identify documents you talked about with Russell Miller?

A. No.

Q. And did you show him any?

A. Now, when you are talking about archival documents, you are talking about the documents which are under seal, right?

Q. That's correct.

A. Not no trick questions? So, only the sealed ones?

Q. Yes.

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A. So, not any of the ones which we agreed yesterday came in through Christofferson?

Q. Not any of the ones which were unsealed during the --

A. -- Christofferson proceeding.

Q. Do you recall Judge Breckenridge's procedural trial?

A. How about Christofferson?

Q. That's right. We'll include that as well?

A. Okay. So the answer is no. I didn't give him any archive documents or show him. I certainly discussed them.

Q. You did potentially give him documents which came from the Christofferson trial that had previously been sealed documents?

A. I would have approached it this way. I would not give him anything which was so voluminous that it was going to be incredibly costly for the firm. That is one criteria which you can assume.

Q. Can you just answer my question? It was a different question. You probably did

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DEPOSITIONS (SL Federal - Pa(m))

give him documents that had previously been sealed but which you regarded as not sealed because they were in the Christofferson trial, correct?

A. If probably means possibly?

Q. Yes.

A. You know, possibly.

Q. So, I'll say possibly?

A. So possibly, yes.

Q. Okay. So, did you -- was there any transfer of money or promises or promises to transfer money between you and Russell Miller?

A. No.

Q. And have there between the Flynn firm and Russell Miller?

A. There is none that I know of so --

Q. Have you read anything by Russell Miller?

A. Yes.

Q. What did you read?

A. I read -- damn, I think -- I think there is a little -- there is a little note that came out, a litle card like that and it said something like thank you for the

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interview and that was about it.

Q. Okay. You haven't read anything that he wrote about Scientology or L Ron Hubbard?

A. No. Is there something?

Q. I'm asking the questions. I don't know of any but your understanding was that he was writing, potentially writing a book or an acticle about L Ron Hubbard?

A. Well, I wasn't quite -- I don't think he seen or got into with me the direction of where it was going, but I believe that certainly L Ron Hubbard appeared to be the focus at some level.

Q. And you are writing a book about L Ron Hubbard yourself, aren't you?

A. No. My last book is not in the same -- my book is not a religion book. My book is not a Paulette Copper book, a Koffman book or -- and my book is not a, I believe, a Russell Miller book. Most those people are --

Q. I'm asking you not about what it is not, I am asking you whether your secnd book is about L Ron Hubbard?

A. Oh, the second one, the one I'm

KL

Deponent: Kenneth David Long
Deponent's: Second Affidavit
Sworn on 5th October 1987
In Support of Plaintiff

IN THE HIGH COURT OF JUSTICE

1987 C No. 6140

CHANCERY DIVISION

BETWEEN:

CHURCH OF SCIENTOLOGY OF CALIFORNIA

(Plaintiff)

- and -

(1) RUSSELL MILLER

(2) PENGUIN BOOKS LIMITED

(Defendants)

AFFIDAVIT
OF KENNETH DAVID LONG

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an executive employed in the Legal Division of the Church of Scientology of California, MAKE OATH and say as follows:

1. I have been a member of the Church of Scientology for eleven years, and employed by the Church of Scientology of California (hereinafter the "Church") for the past seven years. The Church is a non-profit making religious

corporation registered in California since 1954. My duties for the past five years have required that I work closely with and assist Church counsel in all phases of litigation in the United States.

2. I wish to inform the Court at the very outset of this Affidavit that it is not in any way the intention of the Church to prevent the publication of Mr. Miller's book, or the Sunday Times serialisation of Mr. Miller's book. It is, however, the full intention of the Church to prevent publication of the photographs owned by the Church, and the information and documents obtained from the Church as a result of a breach of confidence and in violation of court orders.

3. I have been deeply involved in the litigation of the case of (Church of Scientology of California and Mary Sue) (Hubbard v. Gerald Armstrong), Los Angeles Superior Court case number C 420153, since the inception of that litigation on August 2, 1982. During the course of my participation in that litigation, I personally inventoried the materials surrendered pursuant to court order to the Clerk of the Los Angeles Superior Court in September 1982 by Gerald Armstrong and his counsel. I also attended almost every deposition and/or pre-trial proceeding held in that case, and was present as an assistant to counsel throughout each day of the trial proceedings in May and June, 1984.

4. As will be made clear for the Court in the paragraphs immediately following, the Church's case against Mr. Armstrong

involved thousands of documents covering a wide range of subjects. Mr. Armstrong admitted in oral testimony given in August 1982 that he had taken over 5,000 pages of original documents and 5,000 pages of xeroxed copies of documents, all of which originated from the Archives then maintained by the Church of Scientology of California. There is now produced and shown to me marked as "KDL 27" pages 234 to 235 from the deposition of Gerald Armstrong taken on August 18, 1982. As will also be made clear for the Court in the paragraphs immediately following, the vast majority of the documents taken by Mr. Armstrong remained under seal without interruption from September 1982, when Mr. Armstrong and his counsel surrendered said documents into the custody of the Clerk of the Los Angeles Superior Court, until December 1986, when said documents were returned to the Church. Additionally, through the efforts of Church representatives and counsel, the remaining documents likewise remained under seal throughout the same period, and were never available for copying by members of the public.

5. It was the theft by Mr. Armstrong of those documents, which included the boyhood diaries and journals of Mr. L. Ron Hubbard, letters between Mr. Hubbard and his family, correspondence between Mr. Hubbard and his friends and associates spanning over forty years, Mr. Hubbard's military records, and so forth, which formed the basis for the Church's action against Mr. Armstrong on August 2, 1982.

6. On August 24, 1982, the Los Angeles Superior Court issued a temporary restraining order, a copy of which was attached to my previous Affidavit of October 5, 1987 as Exhibit "KDL 15." That temporary restraining order required Mr. Armstrong, his attorneys, agents, and all persons working in concert or participation with him to surrender to the Clerk of the Court all of the materials originating in the Church archives which had been taken by Mr. Armstrong. The order further required that the materials, when surrendered to the Court, be maintained under seal and available only to the parties for use in that litigation only. This temporary restraining order was then superseded, on September 24, 1982, by a preliminary injunction, which was also attached to my prior Affidavit as Exhibit "KDL 16." The preliminary injunction maintained the sealing provisions established by the temporary restraining order.

7. The preliminary injunction remained in full force and effect with respect to all of the documents surrendered by Mr. Armstrong and his counsel until June 20, 1984, following a trial of the case against Mr. Armstrong. Attached to my previous Affidavit of October 5, 1987, as Exhibit "KDL 18," is a copy of the June 20, 1984 Memorandum of Intended Decision. That decision modified the preliminary injunction to the extent that the documents originally surrendered to the Clerk of the Court by Mr. Armstrong and his counsel became divided into two separate categories -- those documents introduced into evidence during the trial of the action, and those

documents which were not introduced into evidence and which remained in the possession of the Clerk of the Court.

8. The Memorandum of Intended Decision ordered that the documents which had not been introduced into trial remain under seal in the possession of the Clerk of the Court, effectively maintaining the terms of the preliminary injunction with respect to these documents. The Memorandum of Intended Decision also ordered that approximately 175 of the nearly 200 exhibits introduced during the trial from the documents held under seal were to be treated in the same fashion as other Superior Court trial exhibits, i.e., they were to be considered matters of public record and available for inspection by the public.

9. However, on June 25, 1984, and before any of the unsealed trial exhibits could be made available to the public, the Church and Mrs. Hubbard sought and were granted a stay of the trial court's order, thereby preventing the trial exhibits from becoming available for public inspection. A copy of that order staying the unsealing is attached to my previous Affidavit as Exhibit "KDL 19." Between the end of trial on June 8, 1984, and the issuance of the temporary stay on June 25, 1984, I caused a watch to be maintained over the area in the courthouse wherein the trial exhibits were stored to ensure that no one, other than trial court personnel, had access to said materials. Additionally, I later personally confirmed with Ms. Rosie Hart, the clerk for the Honorable Paul Breckenridge Jr., the trial judge for the Church's case

against Mr. Armstrong, that none of the trial exhibits were made available to anyone at any time prior to the issuance of the temporary stay order of June 25, 1984.

10. Thereafter, between June 25, 1984 and December 3, 1984, the Church and Mrs. Hubbard sought and obtained a series of orders which maintained the seal of the trial exhibits until December 19, 1984. Copies of the relevant orders sought and obtained are attached to my previous Affidavit as Exhibit "KDL 19." On December 19, 1984, and until approximately midday on December 20, 1984, the trial exhibits were made available for inspection by members of the public. I was present in court on both days, as were several hundred or more other Scientologists who were outraged that the personal and private papers of Mr. Hubbard were going to be made available for public inspection. I personally observed that, with the single exception of a reporter from the United Press International, no member of the public other than the Scientologists who were permitted to see the trial exhibits. I further observed that no member of the public, including the reporter or any of the Scientologists who did inspect the exhibits, obtained copies of any of the exhibits from the court. The court simply did not permit any of the exhibits to be copied.

11. On December 20, 1984, the Honorable Judge Lawrence Waddington issued a temporary restraining order in the case of (Roes 1 through 200 v. Superior Court of the State of)

(California for the County of Los Angeles), Los Angeles Superior Court case number C 527556, an action taken to reseal the trial exhibits by individuals who were named or otherwise identified in said exhibits. Immediately upon the issuance of the said temporary restraining order, a copy of which is attached to my previous Affidavit as Exhibit "KDL 19," the public inspection of the trial exhibits was halted. Thereafter, no further public inspection of the trial exhibits was ever allowed by the court, and I have personally confirmed with the court personnel responsible for the caretaking of the exhibits that absolutely no inspection or copying of the trial exhibits was allowed. The final order, which maintained the seal on the trial exhibits until they were returned to the Church in December 1986, is also attached to my previous Affidavit in Exhibit "KDL 19." That order, dated January 26, 1985, was issued by the California Court of Appeal in the (Roes) case following the denial of the Roe plaintiffs' application for preliminary injunction.

12. In summary, as this Court can see from the above facts, two of the aforementioned court orders pertaining to the sealing of the confidential materials are especially relevant to the instant action involving Penguin Books Limited and Mr. Miller. The first is the preliminary injunction of September 24, 1982, which is the applicable order for all documents surrendered by Mr. Armstrong and his counsel which were not then later introduced during the May and June 1984 trial of the Church's case against Mr. Armstrong. The second

is the January 26, 1985 stay order issued by the California Court of Appeal in the (Roes) case, which is applicable to the documents introduced during the trial of the Church's action against Mr. Armstrong. Due to these two court orders, all of the documents remained under seal at all times relevant to this present litigation. No copies of any of said documents could have been obtained from the Los Angeles Superior Court.

13. In my First Affidavit, at paragraphs 16 through 23, I referred to a number of passages in Mr. Miller's book which directly quote from the documents originally taken by Mr. Armstrong and which are now at issue in the instant litigation. As the Court will note in reviewing the passages raised herein, however, there is far more at issue than simply the direct quotes. In many instances, Mr. Miller has gone far beyond merely quoting from the documents and, instead, has based much of his writing on information taken from the documents. For example, although pages 29 through 39 of Mr. Miller's book contain a great many direct quotes from Mr. Hubbard's boyhood diaries, those same pages are also almost wholly based on the information in the said diaries even where not directly quoted.

14. I have reviewed the unsworn Affidavit of Jonathan Caven-Atack in which he makes various statements concerning the status of the documents at issue in this matter.

15. At paragraph 3 of Mr. Caven-Atack's Affidavit, I note that he claims to have obtained "copies of the majority of the

released exhibits from the Superior Court of the State of California." For the reasons set forth in more detail hereinbelow, I believe that Mr. Caven-Atack's statement is nothing more or less than a willful and knowing perjury to this Court.

16. In support of my statement, I respectfully request the Court to review paragraph 10 of Mr. Caven-Atack's Affidavit. In said paragraph, Mr. Caven-Atack describes three diaries authored by Mr. L. Ron Hubbard between the years 1927 and 1929. Mr. Caven-Atack explicitly states that the diaries were introduced during the trial of the Church's case against Mr. Armstrong in 1984 as trial exhibits 62, 63 and 65. He further attaches copies of said diaries to his Affidavit as Exhibit JC-A 4.

17. As the Court will note for itself in reviewing Exhibit JC-A 4, none of the three diaries demonstrates the exhibit marking of the Los Angeles Superior Court. Instead, each diary demonstrates a number written by hand on the first page.

18. I was present during each day of the trial against Mr. Armstrong in May and June, 1984. I recognize the handwritten denotations of the numbers "62," "63" and "65" as having been placed on the diaries by Church counsel Robert Harris just before handing the diaries to the trial court and Mr. Armstrong's counsel as exhibits.

19. I have detailed for the Court hereinabove the

various orders issued by the courts in the United States which maintained these diaries under seal until they were returned by the court to the Church in December 1986. The Second Affidavit of Timothy Bowles, at paragraph 14, likewise states that no copies of any of the trial exhibits, which would specifically include the diaries, were ever available to any member of the public such as Mr. Caven-Atack, from the Los Angeles Superior Court.

20. Based on the above facts, I am certain that the (only) possible source for the diaries attached by Mr. Caven-Atack as Exhibit JC-A 4 is Mr. Armstrong and/or his counsel. Had Mr. Caven-Atack actually obtained said copies from the Los Angeles Superior Court, as he claims at paragraph 3, the said copies would demonstrate the exhibit marking of the Superior Court. I am also certain, as a matter of logical necessity flowing from the above facts, that Mr. Caven-Atack has willfully and knowingly perjured himself before this Court.

21. At paragraph 5 of Mr. Caven-Atack's Affidavit, he further avers that he did not at any time receive any sealed documents from Mr. Armstrong or counsel for Mr. Armstrong. However, as set forth hereinabove, the copies of the diaries attached as Exhibit JC-A 4 were given only to Mr. Armstrong and his counsel. The sole source for those copies is therefore obviously and only Mr. Armstrong or his counsel. Mr. Caven-Atack met with Mr. Armstrong in the United Kingdom at least in June 1984, if not also on other occasions. There is

now shown and produced to me marked as "KDL 28" a copy of pages 260 to 262 from the oral testimony of Gerald Armstrong of July 31, 1986, in which he states that he met with Mr. Caven-Atack in the London area on several occasions in or about June 1984. I note that Mr. Caven-Atack avoids any mention in his Affidavits of having met with Mr. Armstrong, and that he likewise does not deny having received any documents from Mr. Armstrong. Interestingly enough, Mr. Caven-Atack also mentions nowhere that he ever went to the Los Angeles Superior Court. In view of the facts already set forth hereinabove, Mr. Caven-Atack's statement is either an additional perjurious statement made to this Court or an attempt to avoid the truth through word games.

22. At paragraph 8 of the Affidavit of Mr. Caven-Atack, he states that the letter from Mr. Hubbard's mother to Mr. Hubbard of September 30, 1929 was introduced as an exhibit during the trial of the Church's case against Mr. Armstrong. I note that Mr. Caven-Atack does not contest the statement made in my First Affidavit at paragraph 18, in which I stated that the letter has never been made available to the general public. My statement is true, as has been demonstrated to the Court through my summary of the orders maintaining the trial exhibits effectively under seal until their return to the Church in December 1986. I further note that Mr. Caven-Atack does not deny that he has a copy of said letter, and that he has failed to attach a copy of said letter to his Affidavit as an exhibit.

6055

23. I have reviewed the statements made by Mr. Caven-Atack in paragraphs 7, 9 and 10 of his Affidavit, concerning Mr. Hubbard's Boy Scout Diary, Mr. Hubbard's letter to the Cape Cod Instrument Company, and a single one of the three boyhood diaries authored by Mr. Hubbard between 1927 and 1929. As a result of my review, I do agree that a few pages from Mr. Hubbard's Boy Scout Diary, the letter to the Cape Cod Instrument Company, and a portion of one of Mr. Hubbard's three diaries previously discussed hereinabove, were actually available to the public from the Church, and were mistakenly brought before the Court through a clerical error. However, in light of Mr. Caven-Atack's apparent disregard for the truth, as additionally evidenced, for example, by the fact that there was no showing of the Boy Scout diaries in Toronto in October 1986, I have reached this conclusion only after having verified for myself the truth of the matter.

24. At paragraph 10 of Mr. Caven-Atack's Affidavit, concerning three diaries authored by Mr. Hubbard between 1927 and 1929, Mr. Caven-Atack states that the three diaries were introduced during the trial of the Church's case against Mr. Armstrong in May and June, 1984. I agree with Mr. Caven-Atack's assertion. Indeed, the Church has not stated any differently. However, I also respectfully refer the Court to the discussion hereinabove concerning the various court orders which maintained these documents under seal. Despite Mr. Caven-Atack's assertion, the documents were not publicly available from the Los Angeles Superior Court, and he could

not have obtained copies therefrom.

25. At paragraph 11 of Mr. Caven-Atack's Affidavit, he refers to a list of exhibits unsealed during the trial of the Church's case against Mr. Armstrong, and concludes that the letter from Mr. Hubbard to his wife, Polly, was not introduced into said trial at any time. Although I know of no such list as that referred to by Mr. Caven-Atack, his conclusion is accurate. I note that neither Mr. Caven-Atack nor Mr. Miller have denied that the information in this letter arises from the documents maintained under seal from September 1982 until December 1986, and I further note that neither Mr. Miller nor Mr. Caven-Atack have attempted to explain how they came into possession of said letter.

26. I have reviewed the Affidavit of Russell Francis Miller, sworn to on October 3, 1987. In doing so, I have noted that Mr. Miller states at paragraph 10 that he obtained much of the information at issue herein from Mr. Caven-Atack. Mr. Miller also avers that he was informed by Mr. Caven-Atack that some of the documents had been used in connection with the litigation between the Church and Mr. Armstrong, but that he was informed by Mr. Caven-Atack that some of the documents, although not all of them, which were used in connection with the litigation had been unsealed. As I have set forth for this Court in the paragraphs immediately hereinabove, and in my First Affidavit, the documents were neither left unsealed nor were they ever available for Mr. Atack to publicly inspect or

copy from the Los Angeles Superior Court. Additionally, as I have set forth in my Third Affidavit, also sworn to on October 5, 1987, I verily believe that Mr. Caven-Atack has perjured himself to this Court, and that Mr. Miller's reliance upon him is therefore sadly misplaced.

27. At paragraph 17 of Mr. Miller's Affidavit, he indicates that the letter from Mr. Hubbard's mother to Mr. Hubbard was made available to him by Mr. Atack. This letter was introduced during the trial of the (Armstrong) case, and so remained under seal pursuant to the stay order of January 25, 1985 until December 1986, when it was returned to the Church.

28. At paragraph 18 of Mr. Miller's Affidavit, he states that he is uncertain that the July 21, 1938 letter from Mr. Hubbard to his wife, Polly, is the same as the letter which he has noted in his book as having been written in October. I have been permitted to compare the relevant text of Mr. Miller's book to the letter of July 21, 1938, and I wish to clearly state to this Court that Mr. Hubbard's letter of July 21, 1938 is the source for the information in Mr. Miller's book. At paragraph 19 of Mr. Miller's Affidavit, he states that he obtained a copy of the said letter from a source whose identity he has promised not to reveal, and that he does not know whether or not the letter is one of the documents maintained under seal by the Los Angeles Superior Court. This letter was surrendered to the Clerk of the Court by Mr. Armstrong and his counsel in September 1982, and it remained

under seal pursuant to the preliminary injunction of September 24, 1982 until returned to the Church in December 1986. It is not surprising that Mr. Miller would not divulge his source since that individual is in violation of the court order of September 24, 1982.

29. At paragraph 22 of Mr. Miller's Affidavit, he indicates that his source for the information contained in his book concerning Mr. Hubbard's 1927 to 1929 diaries was Jon Atack. Said diaries were introduced during the May to June 1984 trial between the Church and Mr. Armstrong. As this Court has been informed hereinabove, the trial exhibits were maintained under seal through various stay orders, and particularly the stay order issued by the California Court of Appeal on January 26, 1985. At no time were copies of the said diaries provided to Mr. Atack or anyone else by the Los Angeles Superior Court.

30. I have reviewed and caused to be verified Mr. Miller's statements in paragraph 23 of his Affidavit. Mr. Miller's statement is highly suspect since he chose not to support said statement by attaching a copy of his request to the CIA. A copy of the document was introduced during the trial of the Church's case against Mr. Armstrong, and was maintained under seal pursuant to sealing orders described hereinabove, and particularly the stay order of January 26, 1985 issued by the California Court of Appeal.

31. Although not previously brought to this Court's

attention, and also based on information taken from documents held under seal pursuant to the preliminary injunction order of September 24, 1982, Mr. Miller's book includes three letters from Mr. Hubbard to Helen O'Brien in 1953. The first of these letters appears at page 213 of Mr. Miller's book, in the second complete paragraph, and concerns Mr. Hubbard's feelings about a former associate, Don Purcell. The letter is directly quoted, in part, by Mr. Miller. The second letter, which also contains direct quotations as well as information from the letter, appears at the last incomplete paragraph on page 213 and the first incomplete paragraph on page 214 of Mr. Miller's book. The third letter appears in the first complete paragraph on page 214 of Mr. Miller's book, and is again both directly quoted from as well as used as the basis for additional information imparted by Mr. Miller. All three of these letters were surrendered to the Clerk of the Court by Mr. Armstrong and his counsel in September 1982, and all remained under seal until they were returned to the Church in December 1986. Mr. Miller's inclusion of the information cited herein clearly shows additional breaches of confidence and violation of the orders issued by the California courts.

32. Based on the above information now furnished to this Court, I am certain that Mr. Miller has used information which could only have originated from Mr. Armstrong. I further believe that Mr. Miller recognized that his obtaining and use of that information was a perpetuation of the breach of confidence initiated by Mr. Armstrong, and that Mr.

Caven-Atack's claim to have obtained the documents from the Los Angeles Superior Court has been made with the knowledge that it is utterly false.

33. At paragraph 5 of his Affidavit sworn to on October 3, 1987, Mr. Miller describes what he terms was a "hostile reaction" from the Church when he informed it that he intended to write a book about Mr. Hubbard's life. Although his statements are irrelevant to the issues herein, and apparently included only to cast a bad light over the Church, I wish to inform this Court that the Church initially met with Mr. Miller and, in fact, agreed at one point to assist Mr. Miller in the research for his book. It was only after Mr. Miller's actions revealed his true intentions were to author a book that was biased and one-sided, contrary to his earlier undertaking that the book would truly be factual, that the Church refused to cooperate with him.

34. Mr. Miller's additional statements in paragraph 5, concerning the persons whom he was interviewing, also appear by their very lack of specificity to be designed to impugn the Church. The Court should be aware that such persons, the sources for Mr. Miller's book, are almost one for one former Scientologists who are now hostile to the Church and to Mr. Hubbard. Hana Eltringham Whitfield, for example, is quoted rather extensively by Mr. Miller throughout the latter portion of the book. Yet he fails to mention at any point that Mrs. Whitfield is attempting to extort millions of dollars from the

Church by filing a purported class action suit in the United States which has been thrown out of court three times, and in which Mrs. Whitfield and the other plaintiffs have been sanctioned by the court. There is now shown and produced to me marked as "KDL 28" a copy of the Court's order of September 24, 1987, dismissing the purported class action suit for the third time.

35. At paragraph 30 of his Affidavit, Mr. Miller attempts to raise the spectre that a granting of the injunction requested by the Church would adversely affect the serialisation of Mr. Miller's book by the Sunday Times. This is not the case. As I stated in paragraph 2 hereinabove, the Sunday Times is free to publish a serialisation of Mr. Miller's book as long as it does so without violating the rights of the Church. In order to ensure that the rights of all parties are made known and thereby preserved to each, the Church's solicitor has forwarded a letter to the Sunday Times, placing it on notice of the current undertaking by the Defendants herein. The letter additionally reminds the Sunday Times of its undertaking of January 14, 1970, in which it agreed not to publish any of the allegations now raised by Chapter 7 of Mr. Miller's book. There is now shown and produced to me marked as "KDL 20" a copy of the October 5, 1987 letter sent by Mrs. Hamida Jafferji, solicitor for the Church, to the Sunday Times. There is also now shown and produced to me marked "KDL 30" a copy of the October 5, 1969 article entitled "The Odd Beginning of Ron Hubbard's Career,"

which article contains the statements prohibited by the aforementioned undertaking.

36. I have reviewed the unsworn first Affidavit of Julie A Scott-Bayfield, who describes at paragraph 2 an incident involving the copying of a xerox of Mr. Miller's book. Although the information imparted by Mrs. Scott-Bayfield is completely irrelevant to the issues in this case, I respectfully differ with her statement that the manuscript being copied by the Church representative is confidential to the Defendants. I have been informed that Penguin Books Limited have disseminated copies of the manuscript copied to persons in at least four separate countries -- the United Kingdom, the United States, Canada and Germany -- and that a person affiliated with the publisher furnished a copy of the manuscript to an individual who then furnished the copy to representatives of the Church. This individual has requested and was promised that he will not be identified due to his fear that he will be harassed or will otherwise be subjected to unpleasant actions by Mr. Miller or Penguin Books Limited for his assistance to the Church. The copy of the manuscript being copied was obtained in a completely legitimate manner. The copies were made solely for use in the present legal proceedings and, as I have been informed by counsel for the Church, therefore are specifically excluded from copyright infringement under the Copyright Act of 1956.

37. At paragraph 3 of the Affidavit of Julie A Scott-Bayfield, she alleges that one of the two photographs

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for which relief is sought by the Church is not actually owned by the Church. Mrs. Scott-Bayfield's statement is extended hearsay, as she is merely repeating information passed on to her by a Doreen Gillham, who, in turn, apparently obtained at least some of the information from a Larry Miller. However, leaving this aside, even if Mrs. Scott-Bayfield's explanation is accepted as true, the Church still has ownership of the photograph. The Church does not accept the claim that the photograph was taken by Mr. Miller, and actively contests that claim. Further, I have caused the records of the Church to be searched, and aver thereon that Mr. Miller was employed by the Church as a photographer. Even if the photograph was actually taken by Mr. Miller, it was taken by him pursuant to his employment as a photographer for the Church, and was and is owned by the Church. The negative is contained in the Church archives, and it is self-evident that Mr. Miller's copy of the photograph was made from another photograph rather than from the negative. Ms. Gillham's memory of events concerning the photograph is additionally suspect in that Julie Fisher was, at the time the photograph was taken, actually fourteen years of age and not ten or eleven as alleged by Ms. Gillham. Interestingly enough, Ms. Gillham herself was only seventeen at the time the photograph was taken. This photograph is registered in the United States Copyright Office to the Church of Scientology of California, with a registration number of VAu 116-627.

38. I have reviewed the Affidavit of Glen Keith Marks,

sworn to on October 3, 1987. I have also reviewed the Affidavit of Michael Roy Garside, sworn to on October 5, 1987. Based on the matters stated therein, I verily believe that Rex Features Limited was not furnished with a copy of the photograph used on the dust jacket for Mr. Miller's book. I further believe that, even if such were the case, the Church did not relinquish or waive its copyright in the photograph; certainly no representative of the Church who met with Rex Features Limited was authorized to furnish such a waiver. I have caused the records of the Church to be searched and, as a result, I verily believe and do aver that the photograph used on the dust jacket of Mr. Miller's book has always been maintained in the archives of the Church, and that it has never been published or disseminated by the Church. This photograph is registered in the United States Copyright Office to the Church of Scientology of California, with a registration number of VAu 116-426.

SWORN at Saint Hill Manor)
East Grinstead, West)
Sussex)

Kenneth David Long

This 5th day of October 1987

Before me,

Solicitor

Deponent: Kenneth David Long
Deponent's: Third Affidavit
Sworn on 5th October 1987
In Support of Plaintiff

IN THE HIGH COURT OF JUSTICE 1987 C No. 6140

CHANCERY DIVISION

BETWEEN:

CHURCH OF SCIENTOLOGY OF CALIFORNIA

(Plaintiff)

- and -

(1) RUSSELL MILLER

(2) PENGUIN BOOKS LIMITED

(Defendants)

AFFIDAVIT

OF KENNETH DAVID LONG

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an executive employed in the Legal Division of the Church of Scientology of California, MAKE OATH and say as follows:

1. I have been a member of the Church of Scientology for eleven years, and employed by the Church of Scientology of California (hereinafter "the "Church") for the past seven years. The Church is a non-profit making religious

corporation registered in California since 1954. My duties for the past five years have required that I work closely with and assist Church counsel in all phases of litigation in the United States.

2. I have read the final draft of Russell Miller's upcoming book entitled "Bare-Faced Messiah," a purported biography of Scientology founder, L. Ron Hubbard.

3. The main sources of information for Mr. Miller's biography of Mr. Hubbard appear to be Jonathan Caven-Atack and Gerald Armstrong. As demonstrated in my First and Second Affidavits of October 5, 1987, Mr. Miller's and Mr. Caven-Atack's claims that they obtained documents concerning Mr. Hubbard and the Church from public sources, including the Los Angeles Superior Court, are overwhelmingly false. In an unsworn affidavit, Mr. Caven-Atack seeks to distract this Court from his obvious contempt and violation of United States court orders by a parade of irrelevant, disjointed and conclusory diatribe, including accusations of criminal activity. This is indeed an interesting turn.

4. Upon information Mr. Caven-Atack, prior to joining the Church of Scientology as a parishioner, had a record of drug use and drug pushing, including two convictions for possession of drugs. In fact, Mr. Caven-Atack credited the religious counseling procedures of Scientology with assisting him in kicking his drug habit, during the time he was a member of the religion. There is now produced and shown to me marked

"KDL 31" a petition written by Mr. Caven-Atack. In said petition, he requested to be allowed to become an employee of the Church of Scientology in Manchester, England, and details his involvement with drugs. Due to the policy of the Church whereby an individual with a criminal background is not allowed to work as a member of Church staff, Mr. Caven-Atack was denied employment by the Church, although he was not denied membership in the Church nor its help in keeping him off drugs.

5. In 1983 Mr. Caven-Atack resigned from his membership in the Church. Thereafter, in late 1983, there was a theft of sacred and confidential Church scriptures from a Church of Scientology in Copenhagen, Denmark, by three British citizens -- Ron Lawley, Robin Scott and Morag Bellmaine. Mr. Scott was subsequentily arrested for the theft and convicted in Denmark. There is now produced and shown to me marked "KDL 32" a copy of the English High Court order enjoining the possession, use and distribution of the stolen Church scriptures.

6. In 1984, Mr. Caven-Atack received a copy of the stolen materials from Ron Lawley, made himself a copy of the materials, and sent them to Larry West, a citizen of California, U.S.A. There is now produced and shown to me marked "KDL 33," excerpts from the transcript of the oral testimony of Martin Ruston, taken in the United States, which describe the part Mr. Caven-Atack played in the illicit distribution of the scriptures stolen from the Church in

violation of the English court order.

7. It thus does not surprise me that Mr. Caven-Atack would maliciously and deliberately engage in all manner of irrelevant and highly prejudicial mud-throwing at the Church of Scientology, given his own documented background as a drug pusher, purveyor of the Church's stolen and confidential religious scriptures and, as set forth in my First and Second Affidavits, possessor of other documents belonging to the religion's founder in violation of United States court orders. Given the discreditable background and dubious motives of Mr. Caven-Atack as regards a Church which opposes the use of drugs, opposes crime, and which extended to Mr. Caven-Atack its help regardless of his past transgressions, it is obvious to me that the evidence he gives should be recognized for what it is and disregarded.

8. Gerald Armstrong has been an admitted agent provocateur of the U.S. Federal Government who planned to plant forged documents in Church files which would then be "found" by Federal officials in subsequent investigation as evidence of criminal activity.

9. The evidence is irrefutable that the great majority of these biographical documents were obtained by Mr. Caven-Atack and Mr. Miller in violation of court sealing orders. As such, the allegation of "unclean hands" in contexts entirely unrelated to the facts at issue here has as its only purpose to distract and inflame this Court into

denying the relief which the Church is seeking.

SWORN at Saint Hill Manor)
East Grinstead, West)
Sussex)

Kenneth David Long

This 5th day of October 1987

Before me,

S.M. BIRD.
Solicitor

De[illegible]: Sheila Macdonald Chaleff
Deponent's First Affidavit
Sworn on 5th October, 1987
In Support of the Plaintiff

IN THE HIGH COURT OF JUSTICE 1987 C No.6140

CHANCERY DIVISION

BETWEEN:

CHURCH OF SCIENTOLOGY OF CALIFORNIA Plaintiff

-and-

(1) RUSSELL MILLER

(2) PENGUIN BOOKS LIMITED. Defendants

AFFIDAVIT OF
SHEILA MACDONALD CHALEFF

I, SHEILA MACDONALD CHALEFF, of Saint Hill Manor, East Grinstead, Sussex, MAKE OATH and say as follows:-

1. I have been a member of the Church of Scientology for the past 27 years. I have been employed by various Church of Scientology corporations for 17 years and am presently the Director of the Office of Special Affairs for the United Kingdom.

2. In 1985 Mr. Russell Miller approached the Church indicating

and was involved in distribution of materials stolen from the Church of Scientology. Mr. Armstrong is known to me to be a US government informant who has admitted on video tape that he intended to plant forged documents within the Church of Scientology and then using the contents to get the Church raided where these forged documents would be found and used against the Church. These are the same two individuals that Mr. Miller used to obtain the documents he used in his book.

8. On 11 August 1987, BBC Radio 4 aired a programme regarding L. Ron Hubbard and the Church of Scientology. This programme was researched and presented by Margaret Percy. After the airing of this programme, Mr. Atack wrote a letter to the "Radio Times" criticising Ms. Percy's programme even though he was a consultant to the programme. There is now produced and shown to me marked "SMC 2" a copy of Mr. Atack's letter to "Radio Times" with Ms. Percy's response.

9. The integrity of Mr. Miller and his sources of the documents in question are at best suspect. I have no doubt that the documents involved in this litigation were obtained in breach of court orders and the confidential relationship between the Church and Mr. Armstrong.

Sheila Chaleff

SWORN at)
Saint Hill Manor)
East Grinstead)
West Sussex)
this 5th day of October
Before me,

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Deponent: Kenneth David Long
Deponent's Fourth Affidavit
Sworn on 7th October 1987
In support of Plaintiff

IN THE HIGH COURT OF JUSTICE 1987 C No.6140

CHANCERY DIVISION

BETWEEN:

CHURCH OF SCIENTOLOGY OF CALIFORNIA Plaintiff

- and -

(1) RUSSELL MILLER

(2) PENGUIN BOOKS LIMITED Defendants

AFFIDAVIT
OF KENNETH DAVID LONG

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an executive employed in the Legal Division of the Church of Scientology of California, MAKE OATH and say as follows:-

1. I have been a member of the Church of Scientology for 11 years, and a member of the Church's staff for 7 years. I am employed by the Church of Scientology of California (hereinafter called "the Church") which is a non-profit

making religious corporation registered in California since 1954. My duties for the past 5 years have required that I work closely with and assist Church counsel in all phases of litigation in the United States.

2. I have been deeply involved in the litigation of the case of "Church of Scientology of California and Mary Sue Hubbard v. Gerald Armstrong", Los Angeles Superior Court cases number C 420153, since the inception of that litigation on August 2, 1982. During the course of my participation in that litigation, I personally inventoried the materials surrendered pursuant to court order to the Clerk of the Los Angeles Superior Court in September 1982 by Gerald Armstrong and his counsel. I also attended almost every deposition and/or pre-trial proceeding held in that case, and was present as an assistant to counsel throughout each day of the trial proceedings in May and June, 1984.

3. While attending proceedings held in the instant matter on Tuesday, October 6, 1987, I noted that the Court seemed to have additional questions concerning the status of the documents in the Armstrong case, and the relationship of the documents in issue herein to said status. Responses to the court's questions, to the content I have discerned them, follow hereinbelow.

4. The bottom line I wish to communicate is this: None of the

1986 were these 9,000 documents available to the general public, or considered to be in the public domain. This fact is very important since four of the seven documents at issue herein were contained in these 9,000 documents which remained under seal at all times. There is no legal way that Mr. Armstrong, Mr. Miller and/or Mr. Newman could have possession of these materials.

8. Trial ended in the Armstrong case on June 8, 1984. Between June 8 and June 20, 1984, the 200 exhibits were held by the trial judge unavailable to anyone else, for his usein writing the Memorandum of Intended Decision. No one other than court personnel had access to those 200 exhibits. I know this to be fact since I both maintained a watch over the area where the documents were kept and verified with Ms. Rosie Hart, the trial court's clerk, that no one was allowed access to these documents. In issuing the Memorandum of Intended Decision, the trial court ordered that 22 of the 200 exhibits were to remain sealed. Those exhibits joined the other 9,000 documents, leaving just approximately 178 exhibits affected by the following events.

9. On June 25, 1984, the first of what was to be a series of orders temporarily staying the unsealing of the trial exhibits was issued by the California court of Appeal. Please note Exhibit "KDL 19" attached to my first Affidavit. In addition, there is now produced and shown to me marked "KDL 34", a chronological History of Major Armstrong Case Orderss, which

have personally prepared to assist counsel and the court.

10. In reviewing Exhibit "KDL 34" attached hereto, the Court will no doubt note what appear to be "windows," or gaps between the vacating of one order and the issuance of the next. These "windows" are far more apparent than they were real. To begin with, I maintained, along with my staff, a daily check with each court in which a temporary stay order was pending in order to ensure that I learned the minute a ruling was issued. So before the trial court received any order vacating a sealing order, the Church obtained another order sealing them up again. In actuality, it took 3-5 days for the trial court to receive a vacating order from the Higher Court and before recript I would personally hand deliver a new stay order. In addition, I also had my staff maintain a watch over the area of the court where these documents were kept during each so called "window" period and no one viewed and/or copied the materials.

11. There was just a single incident when the 178 trial exhibited were made available for public inspection, on December 19, 1984 and until midday on December 20, 1984. This occured after an injunction issued by the Ninth Circuit Federal Court of Appeals expired, and was then halted by the issuance of a temporary restraining order on December 20th in the "Roes" case, previously described in my Second Affidavit. I was physically present at the court during the entire time that the documents

were available for inspection by the public. I personally observed that, with the exception of a UPI reporter who was allowed only to view some of Mr. Hubbard's military records for no more than 30 minutes, only Scientologists obtained access to see the 178 trial exhibits. Additionally, I personally observed and then verified with court personnel that no one, including the reporter, were permitted copies of any of the exhibits. People were permitted to view the documents only and not copy them.

12. Following the issuance of the "Roes" order on December 20, 1984, the 178 trial exhibits were never again unsealed. These 178 trial exhibits, the other tiral exhibits which had been left sealed throughout, and the 9,000 documents nver entered into the trial, were then returned to the Church in December 1986.

13. As is clearly shown by the above events, no one was ever able to obtain copies of any of the 10,000 documents from the trial court. This fact is the basis for my statements, in my Second Affidavit, that Mr. Caven-Atack has perjured himself tto this Court by claiming, in a sworn Affidavit filed herein, that he obtained copies from the court. Mr. Caven-Atack's obvious lack of specifics in his affidavit emphasizes this. Suspiciously left out of his affidavit are the facts supporting Mr. Caven-Atack's claim that he obtained the documents form the California court. Nowhere does Mr. Caven-Atack state when he was in California, when he went into the court, signed the visitor's sign-in log and the details of the actual copying. Mr. Caven-

Atack is silent on these points obviously because he never went to the court as verified by my conversation with the court clerk and my review of the visitor's sign-in log. There can be no doubt that the documents in issue herein, no matter through whom they were funneled to Mr. Miller, originated from Mr. Armstrong, in violation of court orders.

14. I have reviewed the Second Affidavit of Russell Francis Miller, relating to certain letters from Mr. Hubbard to one Helen O'Brien during 1953. The letter discussed by Mr. Miller at paragraph 3 of his affidavit is not at issue in this action, it is neither listed in the amended writ filed herein nor mentioned in my Second Affidavit precisely because, as Mr. Miller understands, it is a matter of public record. Mr. Miller attempts to create confusion with this Court by the inclusion of this particular letter.

15. At paragraph 4 of his Second Affidvait, Mr. Miller references three other Helen O'Brien letters which are at issue herein and states he obtained copies of these letters from Mr. Ron Newman. These three letters are part of the 9,000 documents which remained under seal in the court at all times and were returned to the Church in December 1986. Mr. Ron Newman nor anyone else could have legal possesssion of these letters since they could not have been obtained from the Court. It is interesting that Mr. Miller has "no idea" where Mr. Newman

obtained these letters, an important fact which would obviously be of interest to any researcher, author or anyone else receiving these documents. Gerald Armstrong was the only person that had these letters and he knowingly violated several court orders - the ~~September~~ August KDL 24, 1982 court order to turn in all materials to the court and the June 20, 1984 court order sealing the documents. He obviously didn't keep them sealed since Mr. Newman and Mr. Miller have copies and he didn't turn in all copies of the letters when ordered, since as a condition of settlement Mr. Armstrong turned in any materials he had concerning LRH or the Church. I personally inspected the documents he turned in in January 1987 and among them were the three Helen O'Brien letters, letters that he was ordered to turn into the court.

16. In order to clarify for the Court the exact status of each of the documents at issue herein, I have prepared a short Summary of said documents. There is now produced and shown to me marked "KDL 35" a copy of said Summary. As the Court will note, four of the doucments in issue - the three O'Brien letters referred to hereinabove and Mr. Hubbard's letter to Polly - have never been trial exhibits. They have remained under seal at all times. Three of the documents - two of Mr. Hubbard's boyhood diaries and the letter to Mr. Hubbard from his ~~more~~ mother KDL were Armstrong trial exhibits, but have also remained under seal as shown by the attached Chronological History of Court Orders. The only source for these documents, was not the trial court but Gerald Armstrong

himself.

SWORN at 23/28)
Fleet St, London)
EC4)
)

Kenneth

This 7th day of October 1987

Before me,

Mark W. L. Cooksley

Mark Cooksley
Solicitor of the
Supreme Court

5th : K.D. Long
Plaintiff
Sworn on 8th October 1987

1987 C No. 6140

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

BETWEEN:

CHURCH OF SCIENTOLOGY OF CALIFORNIA

Plaintiff

-and-

(1) RUSSELL MILLER
(2) PENGUIN BOOKS LIMITED

Defendants

AFFIDAVIT

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an Executive employed in the Legal Division of the Church of Scientology of California, MAKE OATH and say as follows:-

1. This affidavit is supplemental to my previous affidavits filed with this Court.

2. I have read Jonathan Caven-Atack's Third Affidavit and Mr Miller's supplemental affidavit filed with this Court yesterday, October 7, 1987.

3. Mr Caven-Atack conveniently changes his testimony of his previous affidavits and now states that he received copies of the documents from a Brenda Yates who had been given the task of making photocopies of documents in possession of Mr Armstrong's lawyer.

4. Mr Miller in his supplemental affidavit now claims, at this late hour, that he "misunderstood" how Mr Caven-Atack obtained copies of the documents. These inconsistent and last minute changes are simply an attempt to create confusion and doubt with this Court.

5. Mr Caven-Atack and Mr Miller's latest affidavits lack, as did their previous affidavits, specific facts. They still fail to identify which documents were obtained from Mrs Yates. Also, they still remain silent regarding how they obtained the documents that remained sealed during the entire course of the Armstrong trial and were never made exhibits.

6. I have read the affidavit of Earle C. Cooley dated October 8, 1987. In regard to paragraph 4 of this affidavit, I can say, based on my being in Court every day of the Armstrong trial, that none of these documents in question in this case were publicly available during the course of the trial. There were over 100 exhibits that were publicly available and not subject to any sealing order but none of these documents are included in this case and none

of them were LRH archive documents. The truth is that the documents in question were sealed throughout the entire Armstrong trial and remain sealed to this day.

7. Produced and shown before me now is exhibit "KDL 36" a true and correct copy of the affidavit of Gerald Armstrong of March 7, 1986. Mr Armstrong himself testified the following: "CSC (Church of Scientology California) sued me in August 1982 in the Los Angeles Superior Court and the documents I had sent my attorneys were ordered to be delivered to the Court where they were put under seal. Mary Sue Hubbard entered the case, hereinafter referred to as (Armstrong), as Plaintiff in Intervention in late 1982. The case went into trial in 1984 and several of the sealed documents were admitted into evidence as defense exhibits 500A-500JJJJJJJ. A Judgment was entered in my favour. The exhibits and other biography documents remain under seal pending the outcome of an appeal taken by plaintiff."

The appeal referred to by Mr Armstrong is still pending in California.

8. During the course of the Armstrong trial and up until this day the Armstrong documents have been effectively under seal and protected by various Court Orders in the United States. Mr Flynn was permitted by the trial Court to use the documents only for the purpose of the Armstrong case and only during the pendancy of those proceedings. The trial

court, in a 23 April 1984 hearing, specifically stated how these documents were to be treated:

"MR LITT: (Church attorney) We would also like -- Mr Flynn has not had access to these documents, assuming that the Court is now allowing him to go into them, we also would like an order that requires that he has seen these materials under seal. He may not disclose the materials or the contents of the materials for any purpose outside of the use in this proceeding. That is the order that exists presently with respect to Counsel.

"THE COURT: I don't have any problem with that, at least until the Court decides what to do with these exhibits."

"MR FLYNN: I essentially have no quarrel with that."

The Court also stated:

"THE COURT: Well, I will accept the representation by Mr Flynn that he is not going to do anything of an untoward (sic) nature that would violate the theory and the principles of what we are trying to deal with here. He is subject to the protective order.

"... and he is not to -- during the pendency of these proceedings until further order discuss or disseminate to other people, other than people like his client or in Court here, matters contained in the sealed records which were not in the public domain before Mr Armstrong first went to Mr Flynn or Miss Dragojevic, her firm."

9. Produced and shown before me now is exhibit "KDL 37", a July 31, 1986 declaration of Mr Michael Flynn filed in another Church case. In the case, Mr Flynn was being accused of giving out Armstrong documents to a media outlet. Mr Flynn stated:

"In this case, of course, when we do not possess the (Armstrong Documents) it would be impossible for us to sell sealed documents to (Der Spiegal)."

10. Produced and shown before me now is exhibit "KDL 38", a true and correct copy of portions of deposition transcript of a Mr Homer Shomer, taken on 23 April 1985. Ms Julia Dargojevic, who was also trial Counsel for Mr Armstrong and who worked closely with Mr Flynn, stated:

"MS. DRAGOJEVIC: Okay. The other thing I wanted to say is that simply by turning over these documents doesn't mean we're limiting ourselves because we consider that a number of documents which were used in the Armstrong case would be applicable to this Request for Production. Unfortunately, those documents are under seal for the present, and there's nothing I can do about producing them."

11. As has been clearly shown by the facts above, Mr Armstrong and Mr Flynn testified that they have complied with the Court Orders sealing the documents in question. If Mrs Yates got the documents from Mr Flynn as Mr Miller testifies she did, or from anyone else, she did so in violation of Court Orders and also in Breach of Confidence.

12. Obviously, if Mrs Yates would have legally had the Armstrong documents in her possession, she would have distributed them the same way she distributed the trial transcripts. In Mr Miller's affidavit, he states that Mrs Yates was to "copy and immediately" distribute the documents obtained from Mr Flynn. As is shown by the facts below, Mrs Yates only distributed the trial transcripts.

13. Produced and shown before me now is exhibit "KDL 39" which is a true copy of several pages from a July/August 1984 publication entitled "The Journal of the Advanced Ability Center." Contained in the classified section of this publication is an advertisement from Brenda Yates offering for sale copies of the Armstrong Trial Transcripts. Nowhere in the ad does Mrs Yates offer the Armstrong documents which would obviously be of more interest to potential buyers than just the trial transcript.

14. Produced and shown before me now is exhibit "KDL 40" a true copy of the January/February 1985 edition of "The Journal of the Advanced Ability Center." Mrs Yate's ad

appears again in the classified section. As the Court can see there is no mention of any Armstrong documents for sale.

15. After reviewing all the facts put forth by the Plaintiff and after reading the inconsistent affidavits of Mr Miller and Mr Atack, there is no doubt that the documents in question in the suit were improperly obtained in violation of Court Orders and in Breach of Confidence.

The Church does not want to prevent the publication of Mr Miller's book, we just want the parts of the book taken from the documents in question removed and our copyright rights in the photographs protected.

SWORN at 23/28 Fleet St)
London EC4)
this 8th day of October 1987)

Kenneth David Long

Before me,

A SOLICITOR

Mark Cooksley
Solicitor of the
Supreme Court

3-7-86

AFFIDAVIT OF GERALD ARMSTRONG

I, GERALD ARMSTRONG, hereby swear under the pains and penalties of perjury as follows:

1. I became involved with Scientology in 1969 and from 1971 to 1981 was a member of the Sea Organization. I was with L. Ron Hubbard much of this time, worked in several areas on his personal staff, and have a great deal of personal knowledge concerning the function of Scientology's various organizations and the documents and files created and maintained in the normal course of their affairs.

2. I am familiar with what were known in Scientology organizations as B-1 files. B-1, or Bureau One, was the Intelligence Bureau of the Guardian's Office which was an organization "corporately" within the Church of Scientology of California (CSC). I was in B-1 for a few weeks in Daytona Bearch, Florida in 1975, and in 1974 and 1975 was the Intelligence Officer on the ship "Apollo" (Flag), Hubbard's headquarters at the time. I was, for practical purposes, directly under the Assistant Guardian for Intelligence on the ship, and was trained on GO Intelligence procedures and policies. I have seen B-1 files, including my own which although edited and stripped of much of its contents, was produced in the case of Christofferson v. CSC, et al, in

Portland, Oregon in 1985. B-1 files were created on every staff member, even while in "good standing" in the organization. The usable intelligence information B-1 collected on staff included: "crimes," sexual histories, drug histories, any connections to government agencies, financial institutions, medical or psychiatric individuals or group, and media or public relations, lists of friends, contacts, family and connections. Each B-1 file contained a "time-track," a detailed chronology of the person's whole life. When the person was deemed a real threat to the organization or Hubbard, as Tonja Burden was because of what she knew about him, virtually everything, every paper from every file in the organization, data excerpted or culled from her preclear files, debriefs of staff, reports of operatives against her, etc., would be added to the B-1 file. It is an intelligence file for intelligence purposes. It is not part of legal operations.

3. From the beginning of December 1975 until the end of May 1976, I worked in L. Ron Hubbard's External Communications Unit (LEC) in Dunedin, Florida. I was the Deputy LEC Aide, under Mike Douglas who was directly under Hubbard. I handled on a daily basis the telex and dispatch traffic to and from Hubbard. All of his control lines for Scientology internationally ran through my unit in Dunedin, even after he left in March 1976 and went to Washington, D.C. when his cover in Dunedin was blown. The Dunedin operation was manned by

people who had been on the "Apollo" and had been employees of Operation and Transport Corporation (OTC), 98% of the stock of which was owned by L. Ron Hubbard. For "legal" and tax reasons, the "Apollo" was considered a "marine mission of the Church of Scientology of California." In Dunedin, each person was told that he was an employee of United Churches of Florida (UCF) which was a cover or "shore story" Hubbard created to hide Scientology and his control. Attached as Exhibit A is a report from Henning Heldt, the head of the United States Guardian's Office, itself part of CSC, to Hubbard concerning a program originated by Hubbard called "Goldmine." I saw this dispatch, plus "Goldmine" orders and compliances while in LEC. As can be seen by the attached dispatch, CSC purchased the Florida properties and "UCF is a CSC controlled corporation." Also, as shown by this dispatch, and what I knew from years of work in various positions in the organization and close to Hubbard, there was no corporate integrity and Hubbard controlled virtually every aspect, corporate, financial or otherwise of CSC and all the Sea Org.

4. In addition to "Goldmine," a program file for which was maintained in LEC, there were several other programs or missions I recall that Hubbard operated during 1975 and 1976 and for which there were also files in LEC into which went all correspondence relating to those programs and missions, including telexes, compliances, daily reports and debriefs.

These programs or missions included at least:

A. Program Power;
B. Flag Land Base Setup;
C. Pat & Trudy Broeker;
D. Freedman Mission;
E. Flag GO;
F. California properties;

Program Power which was written by Hubbard concerned an "Early Warning System" directing the GO (CSC organization) to keep Hubbard from being served in any lawsuit. The GO compliances, projects and operations which came out of Hubbard's program were also included in the LEC program file.

Flag Land Base Setup involved several missions or projects concerning Clearwater which Hubbard wrote and operated. As can be seen by Program Power and its accompanying dispatch, attached hereto as Exhibit B, Hubbard claims at November 26, 1975 to be running all of Scientology. "I am actually acting on all Scientology lines in one way or another in a very heavy Phase I." (Phase I means, in Scientology jargon, to single-hand, or handle things oneself). Hubbard gives an example of the "non-US registration cycle which (he was) having to push." This was the operation to get landed immigrant status for foreigners at the Clearwater Base by fraudulent means. The program and mission files for all the base actions Hubbard operated were maintained in LEC.

Pat and Trudy Broeker on their mission which Hubbard operated were his "eyes and ears" into the Clearwater Base as soon as it started to operate. They reported daily to him on all activities at the Base.

Fran and Frankie Freedman was a mission operated by Hubbard to purchase the Clearwater properties. They later negotiated the deal for the Dunedin property. Hubbard refers to them as "F & F" in his November 26, 1975 dispatch.

Hubbard operated all the GO activities in Clearwater, and files were maintained at LEC of his correspondence and orders. He states in the November 26, 1975 dispatch, "I am actually operating as an AG (Assistant Guardian - the top GO post in any organization) office USB (United States Base) almost totally single hand." GO activities included Intelligence, Public Relations, Legal and Finance.

Around May 1976, Hubbard sent into LEC a number of orders regarding the move of him and his personal office to California. I was briefed on mission orders (MO) to go to California to set up a staging area in Culver City. My MO's and Hubbard's orders were in LEC. The later LEC office in Culver

City maintained additional files on the California properties.

5. Throughout 1980 and 1981, I worked in Hubbard's Personal Public Relations Bureau assembling documentation from Hubbard's personal archives and other sources for the production of a biography to be written about him by a non-Scientology writer, Omar V. Garrison. I provided, as called for by contract, approximately 100,000 pages of documentation to Garrison, most of it copies. After I left the Sea Org in December 1981, Hubbard and Scientology, pursuant to his "Fair Game Policy," which is in fact, a license to sue, lie to, cheat and destroy any perceived enemy, initiated a number of intelligence and overt harassment actions against me. In the summer of 1982, in order to defend myself, I obtained back from Garrison some of the documents provided him and sent them to my attorneys. CSC sued me in August 1982 in the Los Angeles Superior Court and the documents I had sent my attorneys were ordered to be delivered to the Court where they were put under seal. Mary Sue Hubbard entered the case, hereinafter referred to as Armstrong, as Plaintiff in Intervention in late 1982. The case went to trial in 1984 and several of the sealed documents were admitted into evidence as defense exhibits 500A-500JJJJJJ. A Judgment was entered in my favor. The exhibits and other biography documents remain under seal pending the outcome of an appeal taken by plaintiff.

6. I am familiar with the various biographical sketches listed in request number 48 in Plaintiff's Request for Production of Documents to Defendant Church of Scientology of California, hereinafter referred to as the "Request for Production," in the case of Burden v. Church of Scientology, et al. Although some of these were exhibits in Armstrong, I have personal knowledge that CSC has possession of the original of each of these documents separate from the copies under seal in Armstrong.

7. I am familiar with the various naval records of L. Ron Hubbard listed in request number 49 of the Request for Production. Although copies of some of these were exhibits in Armtrong, I have personal knowledge that CSC had possession of the originals or earlier generation copies of each of these documents separate from the copies under seal. I am also aware of sworn statements by Scientology agents that the organization possesses even more of Hubbard's naval records than I possessed while working in his PR Bureau.

8. I am familiar with the documents described in requests nos. 50, 51 and 52 in the Request for Production. The original of these documents is in the possession or control of CSC. These documents, which are in Hubbard's handwriting, reveal that his "war wounds" were feigned, and they show his intent when creating his "mental therapy."

9. I am familiar with the documents listed in request no. 62 of the Request for Production. These are generally as follows:

A-PP: biographical representations and naval records.

RR-CCCC: naval and VA records.

JJJJ-MMMM: Hubbard's involvement in black magic.

QQQQ-YYYY: B-1 materials on L. Ron Hubbard, Jr., and representations about Dianetics/Scientology as a science and mental therapy; "religion angle."

BBBBB: Scientology in field of mental therapy.

DDDDD-FFFFF: control, and undated resignations held by Hubbard.

HHHHH: "resignation" as trustee.

JJJJJ: Hubbard security.

MMMMM-NNNNN: Hubbard control of litigation.

RRRRR-SSSSS: Interpol report; Hubbard's control of Clearwater setup.

UUUUU-AAAAAA: Hubbard control of Scientology corps and money.

DDDDDD-FFFFFF: Hubbard's intent to attack enemies.

HHHHHH: Hubbard's use of law to attack.

JJJJJJ: Hubbard control of intelligence operations.

KKKKKK-NNNNNN: Hubbard re attack.

PPPPPP-SSSSSS: Hubbard attack of individuals;

intelligence data on Attorney Michael Flynn.

VVVVVV: Hubbard's statement re his "Ph.D."

XXXXXX-AAAAAAA: Hubbard representations; intelligence; Hubbard's ownership of Sea Org ships.

DDDDDDD-FFFFFFF: Hubbard letter of introduction to me; attack on press.

IIIIIII-JJJJJJJ: Hubbard representations; control of finances.

10. The documents from under seal which went into evidence in Armstrong show what representations Hubbard made about himself and what the truth behind the representations is. They show that Hubbard was not crippled and blinded during World War II and did not cure himself with Dianetics. They show Hubbard's various claims about Scientology being a "science" and what results were guaranteed with its use. They show his intent in relabelling Scientology a "religion." And they show his vindictiveness and intent to control and destroy people.

11. CSC has claimed in their response to the Request for Production that they do not have possession or control of the documents which had previously formed the biography archives under my control. In their verified complaint in Armstrong, they stated about these same documents that they were "the personal property of plaintiff CSC." During the litigation they changed their claim to that of bailee, and Mary Sue Hubbard, the

intervenor, claimed that the documents were her personal property.

I am personally aware that in the Christofferson case, CSC was ordered to produce, and did produce, copies of some of the same documents which had been exhibits in Armstrong.

Signed under the pains and penalties of perjury under the laws of Florida.

Executed this 7th day of March, 1986 in Boston, Massachusetts.

GERALD ARMSTRONG

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS
March 7, 1986

Then personally appeared before me the above named Gerald Armstrong, and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Lorna E. Doherty
Notary Public

My Commission Expires 3/31/24

FBI 3303 (F4C)

A

SECRET

Very Very well done
Love
Ron

25 November 1975

[illegible]
COMMODORE
gd: TSM 7.18.26.2
DGUS

cc: CSG

cc: GWY

24S103
IRS
1/18/77
9 of 11

RE **GOLDMINE**

Yrs: 22 Nov 75

Dear Ron,

Goldmine has produced instantaneous VGIs on the DG Legal US, DG Finance US, Marty and Joel, and Karno. CofSofC ownership had been mentioned a number of times, particularly by Karno, but we had not thought of this method of turning of CofSofC ownership into a Lead Pipe Cinch. The right item of course makes the N/A Corp work quite worthwhile, even though we are not using it. All concerned feel the work has paid off.

Goldmine will be in the 26 November mailpack to NY for Secret Issue, and I have separately noted the persons to whom the targets are assigned. A copy will be sent you separately.

A brief rundown of the points covered today with Karno.

1. Estimated Tax.

Per Target 5, this is to be reestimated with great care. Karno mentioned this point, saying that if Marty came up with 5.4 using standard accounting procedures, we had best prepare a higher figure for protection from seizure. Karno figures that if it comes down to a seizure action, the IRS will be behaving so insanely that it is likely to inflate their already flimsy accounting procedures.

Target 5 will cover this in detail and will be reviewed by Karno.

2. Available Funds

I do not have all the CofSofC figures up to date here, but will shortly. Preliminarily I have excellent news on covering the indebtedness. Per Lola, CofSofC Lux Account Balance is $7,100,000.00 approximately. Defense Funds for CofSofC total $2,555,563.33 as of 30 Sept 75. Subtracting $3,100,000.00 for Fort Harrison, Bank Building, Cars and various costs, the remainder is in excess of $6,500,000. This leaves funds for purchase of Building 13, and the covering of Marty's 14 Nov figure.

To bring this fully into the field of Lead Pipe Cinches, I discussed with Karno the availability of Trustee Funds for the purpose of a Bond, and he agreed these could be used. Trustee Funds totaled $3,372,000.00 at the end of 1974, nearly a year ago.

10'
13 mile

Exhibit "A"

24 SKo
WRS
7/8/77
10811

While 4,5,6 and 7 must be worked out in detail, it appears on a preliminary basis that the liability is covered. Not that this fact should become widely known immediately, as this plan includes a very deferenforced but recapturable expense for Income Demand purposes per Building Fund Policy which delights my finance trained heart.

3. SLD&LC

Not
SLO

Since the purpose of SLD is to act as CofSofC nominee in this matter, it would be excellent if the stock would be owned by CofSofC. This fact would never appear in CW, and would remove any possibility of IRS taking a shot at the CofSofC-SLD relationship.

Also concurrent Board Meetings on the part of CofSofC and SLD&LC would probably knock out the need for any backdated contract, and since Board Minutes are commonly written well after the meetings the record, no stigma is attached if these are dated to be a few weeks or months after the date of the meeting. Full CSW will follow on this point.

4. UCF: (United Church of Florida

UCF is left without a lease, and very little assured income, and a function of fronting for the CofSofC on accounting and PR basis. We gave some thought today to how UCF can maintain its image without a lease or income, bring Churches and religious people together at the Harrison despite the fact of no lease or title to the property.

A possible solution presented itself: UCF is a CofSofC controlled corporation, formed for the purpose of Uniting Churches and religious people, revitalizing religion into an effective force to arrest the decline of Western Society. It is not a creation of CofSofC for its own direct self interest, rather the indirect interest of revitalizing society. As this fits into Targets Defense, this can be continued by PR Bureau on an active basis all over the country, or on a limited basis, however we wish.

Since UCF is a subsidiary of CofSofC it can be funded by CofSofC as to its PR activities. And since its a part of CofSofC, it may lease, rent and use CofSofC space for its religious purposes. Also personnel may transfer freely back and forth, a factor which can prevent logistic difficulties.

Yet, to the outside world in Clearwater, UCF may represent itself as the user of the Harrison, and even that CofSofC is a member. It can keep doing what it's doing which is from all reports quite successful. From the outside, the whole operation can be made to appear to be UCF and Members. Yet corporate distinctions that could make these appearances difficult to maintain (personnel, income) can be very loose.

UCF can fade out, or not, when CofSofC is ready to surface. The relationship between UCF and CSC is simplified by the fact that in the ultimate analysis it does not have to be truly distinct or at arm's length.

5285

GO ORDER 261175LRH SECRET 26 Nov 75

DGUS ccCSG
ccGWW
ccPERS PRO

PROGRAM LRH SECURITY
CODE NAME: POWER

1. Maintain an alerting Early Warning System throughout the GO W/W so that any situation concerning govts or courts by reason of suits is known in adequate time to take defensive actions to suddenly raise the level on LRH personal security very high. DGUS ____

2. Begin at once to build up a USB AG office that is permanent and effective in all Bus both to take this load off LRH and CSG lines and to proof up the USB against catastrphes in any Bu. area. The USB area is the most sensitive area you now have in US or international operations and the AG office there should be commensurate with the importance and potential threat of the existing scene. GWW, DGUS 22.3.77

3. Really attain PROAC in the CW operating area for the organizations operating there, sort out any weak spots or potential threats internal or external and handle, concentration in this target being upon the operation itself and its contacts and internal personnel. Dynamite spots should be predicted for in advance (example Non-US registration cycle which I am having to push) and handled before any repercussion occurs. DGUS 22.3.77

4. Get in a stream of reports by making the USB-GOWW reporting cycle from USB AG very fast and positive, with this line running directly to the GO on its own W/W channels independent of LRH-CSG lines. These lines come back from GOUS and GWW to LRH-CSG, not from USB to LRH-CSG for local handling. Put a terminal in at GOUS that coordinates USB as a single-hatted action. GWW, DGUS Done 31 May

5. Develop a specific set of stats for the USB GO Office that reflect the reality of the existing scene, including every BU. DGUS [illegible] 19.7.76

6. Push the stats into Power. GWW, DGUS ____

LRH

7/1/77
SK 1/8

GOVERNMENT
EXHIBIT

"O"

26 Nov 75

SECRET

cc CSG

GOUS 33 LRH PERS PRO XXXXXXXXXXXX
CSW
LCUS rc

Dear Henning:

Yours of 24 Nov.

We have found a whole part of a condominium to rent. It is 5.3 miles from the FH. We have been negotiating on it as a simple rental at very low cost and the owner is delighted since he can buy carpets and occupation certs with our rental for the whole block. It will be UC or SID - I don't know what name the mission (F&P) is using for the negotiation.

As the office of LRH will be there, the bus and phone lines will have to lead to there. Also as I can't operate without comm, a couple lease lines for intercomms and telexes will also lead to there.

This makes a pretty high profile but it is well outside the CW influence band and won't get PR or press connected. It's a so-what. My name is not being used in the area and it is probable that it will act as low profile. But it isn't Ratcliffe. That was impossible due to lack of hotels near the airport.

I am not making a very strenuous effort to maintain a lot profile but my staff are doing well at it/ under present circumstances.

The Goodrich and Cooper suits are dying and no papers will get served there. And you guys seem to have IRS under heavy control. And UC etc will get the PROAC in in CW.

If I were not on lines, this USB set up would go to blazes in a hurry. I save the operation once or twice a day rounding up bad goofs and make my years pay two or three times a week. (Not an exaggeration.) I am actually acting on all Scn lines in one way or another in a very heavy Phase I. My current line set up is too slow and ragged to keep up with the operation smoothly. I am actually operating also as AG office USB almost totally single hand. You do not really have an AG office here, I hate to have to say, and when Lindy pulls out I'll probably have CW on my plate but good. LRH PRs are already carrying a load on that.

I'll make recommendations later on the UPP
but right now all I am trying to do is operate
and handle. This affects security like mad, of
course. Operation, therefore, is being played
first and security second.

I was making a daily appearance at the base
doing research and lecturing on a Special RD
that is needed for PTS cases (and succeeding).
(And had to knock it off day before Yesterday
and suspend the lectures because of pressure on
the lines). Most of my trouble is caused by
unpositive comm lines while having to Phase I.

private
Thus there will be an HQ/office at the FH (that
is easy as I just drive in the garage and enter the
third floor-garage elevator hall door and go on up.
There will possibly be a personal office at the bank
bldg if they get it clean. This is rougher as one
has to step out of a car and walk to the door.

Probably my best layout is to get very well
known in the CW area with a camera in my hand
and my Universal News press card taking pictures of
"beautiful CW" which is the local button (they
hate tourists and also retired people). My photoshoot
people will continue, as I have a whole org for that
sort of thing and they can be well out of town.
In the Caribbean I didn't get hit and actually
fronted for the operation and so did SCN to
smash the CIA thing. But the CIA thing won -
I and Scn were not any reason (by actual investigation)
for our losing ports. We rode through on Bermuda
solely because of me and Scn and also Santo Domingo.
The kooky Jamaica-Barbadoes-Trinidad flaps were
all DESPITE me and Scn. Curacao is a mixed pkg
but right this minute my personal PR in Curacao
is out the roof. And the tourism brochure I did
for them would push it even higher, PM being the
lonely psycho opposing and powerless due to splendid
action by CSG personally.

So I think the exact plan will be that I
play operations above security, slide in on personal
PR as that well known photographer very visible with
a whole crew camera in hand and living in a nearby town.
Not push it. Just let it seep in. My portrait of the
mayor will hang in city hall never fear. As to quality
and carrying it off, according to the brochure separation
negative people and the LA printers I'm the only one
they're having no trouble with amongst ALL their
photographers and the NY billboard scene is a rave.

So we play it this way and play it by ear of course. And we maintain a security that won't interfere with operations.

And we count on your B1 to very quickly pre-alert any trouble so I can go fishing until you handle.

AND WE COUNT ON YOU GUYS TO MOW IRS DOWN AND WIN ACROSS THE BOARDS.

That is the way it will have to be played within the demands and realities of the scene.

I have some very good people on my immediate staff who do fine operationally. And they do well on security/. They could not even begin to do well on the type of flap like Federal or suits which I am counting on you guys to handle.

This planning includes a really fine local GO office so this scene stays cool and stays off CSG's and my plate.

So the program is attached.

Love,

Ron

6103

Law Offices
FLYNN & SHERIDAN
400 ATLANTIC AVENUE
BOSTON, MASSACHUSETTS 02210
(617) 350-7200

MICHAEL J. FLYNN
WILLIAM A. SHERIDAN
MICHAEL A. TABB

December 27, 1988

Clerk of Court
Court of Appeal of State of California
2nd Appellate District
Division Four
3850 Wilshire Blvd
Room 301
Los Angeles, CA 90010

RE: Church of Scientology of California v. Armstrong

Dear Sir:

Enclosed please find Response of Gerald Armstrong to Opposition filed by Real Party in Interest, Bent Corydon and Certificate of Service.

Very truly yours,

Michael J. Flynn

MJF:mb

ENC.

cc: Mr. Kendrick Moxon and Mr. Timothy Bowles
Mr. Eric Liberman
Ms. Toby Plevin
Clerk of Superior Court
Paul Morantz

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION
Civ. No. B ____________
(Super. Ct. No. C420153)

CHURCH OF SCIENTOLOGY OF CALIFORNIA
and MARY SUE HUBBARD,

Plaintiff-Petitioners,

-against-

GERALD ARMSTRONG

Defendant

CHURCH OF SCIENTOLOGY OF CALIFORNIA
and MARY SUE HUBBARD,

Petitioners

-against-

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNT OF LOS ANGELES,

Respondents.

BENT CORYDON, Real Party In Interest

Response From the Superior Court of California
County of Los Angeles
Judge Bruce R. Geernaert

RESPONSE OF GERALD ARMSTRONG TO OPPOSITION FILED BY REAL PARTY IN INTEREST, BENT CORYDON

MICHAEL J. FLYNN
FLYNN & SHERIDAN
400 ATLANTIC AVENUE
BOSTON, MA 02210
(617) 350-7200

Counsel for Defendant

Respondent Gerald Armstrong has only recently become aware of the orders of Judge Bruce Geernaert unsealing portions of the file in the instant case and the petition for writ of Supersedaes subsequently filed by the Church of Scientology of California in the instant case. Although Mr. Armstrong was a party to the stipulation settling the case in the Superior Court and sealing the file, the moving party below did not serve Respondent Armstrong or his undersigned counsel of record with any pleadings regarding the application to unseal the file. Respondent Armstrong and his counsel therefore wish to make their position known to this Court.

1. Counsel Paul Morantz, has filed in this Court a "Response to Petition for Writ of Supersedaes" with attached memorandum of law and exhibits. The exhibits include confidential correspondence from Respondent Armstrong's attorney's office and an apparent copy of a confidential settlement entered into between one of Mr. Armstrong's attorney's clients and the Church of Scientology. We do not know precisely how Mr. Morantz obtained such documents but we believe that they were given to him by an attorney who had been consulted about the documents. This other attorney was never authorized to disclose or divulge the documents. See Affidavit of William Franks, attached as Exhibit 1. We request that these "exhibits" to the "opposition" be immediately sealed as they are confidential settlement documents not intended to be made public and not part of the file unsealed by Judge Geernaert.

2. Numerous materials in the Armstrong case filed were sealed at the behest of both parties as part of the settlement of the case. That sealing was an intrical part of the settlement, which settlement should not be undone.

By his attorney,

Michael J. Flynn
Flynn & Sheridan
400 Atlantic Avenue
Boston, MA 02210
(617) 350-7200

DATE: December 27, 1988

EXHIBIT 1

I, William Wagner Franks, swear under the pains and penalties of perjury, on or about mid-summer 1988, I sent to Atty. Van Sickle certain documents for the purpose of ascertaining the legal validity of certain provisions of those documents. These documents were regarding the settlement with C of S. At no time did I give permission to publicize or make public contents of the settlement documents.

Attested as true.

William W. Franks
William W. Franks

Edith Mears

NOTARIAL SEAL
EDITH MEARS, Notary Public
St. Davids, Delaware Co.
My Commission Expires July 18, 1992

CERTIFICATE OF SERVICE

I, Michael J. Flynn hereby certify that I have served a copy of the foregoing Response to Gerald Armstrong to Opposition Filed by Real Party in Interest, Bent Corydon by mailing same, postage prepaid, to

Mr. Kendrick Moxon and Mr. Timothy Bowles
6255 Sunset Boulevard
Suite 2000
Los Angeles, CA 90028

Mr. Eric Lieberman
Rabinowitz, Boudin, Standard, Krinsky, & Liberman, P.C.
740 Broadway at Astor Place
Fifth Floor
New York, N.Y. 10003

Ms. Toby Plevin
Sayre, Moreno, Purcell & Boucher
10866 Wilshire Boulevard
Fourth Floor
Los Angeles, CA 90024

Clerk of Superior Court
Los Angeles County
111 North Hill Street
Los Angeles, CA

Paul Morantz
A Professional Corporation
P.O. Box 511
Pacific Palisades, CA 90272

12/27/88
Date

Michael J. Flynn

THERE IS NO PAGE 6109

rvd 11-30-89

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name and Address)*
CUMMINS & WHITE
Barry Van Sickle
1600 Wilshire Boulevard
Los Angeles, California 90017

TELEPHONE NO (213) 413-3600

ATTORNEY FOR *(Name)*

FOR COURT USE ONLY

6110

NAME OF COURT Los Angeles Superior Court
STREET ADDRESS 111 North Hill Street
MAILING ADDRESS
CITY AND ZIP CODE Los Angeles, California
BRANCH NAME

PLAINTIFF/PETITIONER: RELIGIOUS TECHNOLOGY CENTER, et al.

DEFENDANT/RESPONDENT: JOSEPH A. YANNY, et al.

CIVIL SUBPENA ☒ Duces Tecum

CASE NUMBER C690211

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(name)*:

GERALD ARMSTRONG, aka Gerry Armstrong

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this action as follows unless you make a special agreement with the person named in item 3:

a. Date: December 11, 1989 Time: 9:00 am Dept./~~Div~~: 41 Room.:
b. Address: 111 North Hill Street, Los Angeles, California 90012

2. AND YOU ARE

a. ☒ ordered to appear in person.

b. ☐ not required to appear in person if you produce a true, legible, and durable copy of the records described in the accompanying affidavit as follows: (1) place the copy of the records in an envelope (or other wrapper) and seal it; (2) attach a copy of this subpena to the envelope or write on the envelope the case name and number, name of the witness and date and time from item 1 above; (3) place this first envelope in an outer envelope or wrapper, seal it, and mail it to the clerk of the court at the address in item 1.

c. ☒ ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian of records or other qualified witness and the production of the original records is required by this subpena. The procedure authorized pursuant to subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpena.

3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE ATTORNEY REQUESTING THIS SUBPENA, NAMED ABOVE, OR THE FOLLOWING PERSON, BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name: Barry Van Sickle b. Telephone number: (213) 413-3600

4. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 3.

5. You are ordered to appear in this civil matter in your capacity as a peace officer or other person described in Government Code section 68097.1.
Date: Clerk, by ______________________, Deputy

DISOBEDIENCE OF THIS SUBPENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

For Court Use Only

Dated: November 29, 1989

Frank S Zolin
(SIGNATURE OF PERSON ISSUING SUBPENA)

FRANK S. ZOLIN
(Type or Print name)

County Clerk/Executive Officer of the Superior Court
(TITLE)

(See reverse for proof of service)

Form Adopted by Rule 982
Judicial Council of California
982(a)(15) Rev. July 1, 1987

CIVIL SUBPENA

Code of Civil Procedure §§ 1985, 1986, 1987

765810K - RC095 - 7-87

DECLARATION OF RICHARD J. WYNNE

I, Richard J. Wynne, declare:

1. I am an attorney at law licensed to practice in the State of California. I am an associate of the law firm of Cummins & White, attorneys of record for Defendants Joseph A. Yanny, Joseph A. Yanny, P.C. and Richard J. Wynne in this matter.

2. I have personal knowledge of all of the following facts and if called on to do so I could competently testify to them in a court of law.

3. The documents described in the attached Exhibit "A" are relevant and material to issues raised in pleadings in this case and, defendants are informed and believe, are within the possession, custody and control of the person subject to this subpoena.

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of November, 1989 at Los Angeles, California.

RICHARD J. WYNNE

EXHIBIT "A"

Documents to be Produced

All documents relating to any settlement between any person or entity affiliated with Scientology, including but not limited to Church of Scientology of California, Church of Scientology International, Religious Technology Center, Author Services International, Church of Spiritual Technology and any person or entity settling any litigation with any of the named entities. All documents relating to said settlements include, but is not necessarily limited to, the following categories of documents:

A. Any and all final or executed versions of settlement agreements.

B. All draft versions of settlement agreements that were exchanged among the parties and/or their counsel.

C. All correspondence relating, referencing, explaining or discussing the express or implied terms of any such settlement agreement or draft thereof.

6113

28 1990
FSA

ORIGINAL

MAR - 9 1990

Permission to file respondent's brief GRANTED
Time to file respondent's brief extended to 60 days after date of this order.

EAL - SECOND DIST.
LED
28 1990
VILSON Clerk
Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al.,

Plaintiffs-Appellants,

v.

GERALD ARMSTRONG,

Defendant-Respondent

MARY SUE HUBBARD

Intervenor.

Case No. B025920

LASC No. C420153

RESPONDENT'S PETITION FOR PERMISSION TO FILE RESPONSE AND FOR AN EXTENSION OF TIME TO FILE RESPONSE

3-22-90

I am the respondent Gerald Armstrong. I am petitioning this court at this time for permission to file a respondent's brief in this appeal and for an extension of time in which to file a respondent's brief or other appropriate document.

1. Permission to File:

The unusual need for this court's permission to file a respondent's brief arises from a condition contained in a document entitled MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT signed by me December 6, 1986, a copy of which is attached hereto in a sealed envelope as Exhibit A. I have no objection to this document being unsealed.

Para. 4A of the settlement agreement allowed appellants to maintain their appeal, no. B005912, which had been filed in 1984, although the case filed 2-28-90

6114

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al.,	Case No. B025920
Plaintiffs-Appellants,	LASC No. C420153
v.	
GERALD ARMSTRONG, Defendant-Respondent	RESPONDENT'S PETITION FOR PERMISSION TO FILE RESPONSE AND FOR AN EXTENSION OF TIME TO FILE RESPONSE
MARY SUE HUBBARD Intervenor.	

I am the respondent Gerald Armstrong. I am petitioning this court at this time for permission to file a respondent's brief in this appeal and for an extension of time in which to file a respondent's brief or other appropriate document.

1. Permission to File:

The unusual need for this court's permission to file a respondent's brief arises from a condition contained in a document entitled MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT signed by me December 6, 1986, a copy of which is attached hereto in a sealed envelope as Exhibit A. I have no objection to this document being unsealed.

Para. 4A of the settlement agreement allowed appellants to maintain their appeal, no. B005912, which had been filed in 1984, although the case was ostensibly settled. Para. 4B contains the condition that I "waive any rights [I] may have to oppose (by responding brief or any other means) any further appeals taken by the Church of Scientology of California."

I have recently become convinced that it would be a fraud upon this court to not advise it that the respondent is prohibited from filing a brief. I am also now convinced that my right to file a respondent's brief is not something that can be taken away by such a settlement agreement.

I have discovered, moreover, that "the failure to file respondent's brief imposes an unnecessary burden on [the] court, and at least raises the inference that respondent concedes that the appeal is meritorious," Sowell v. Sowell, 164 Cal. App. 2d 371, 330 P.2d 391 (1958), Yarbrough v. Yarbrough, 144 Cal. App. 2d 610, 301 P. 2d 426 (1956); that the court "may assume . . . that the respondent has abandoned any attempt to support the judgment, and . . . may also assume that the points made by the appellant are meritorious," Roth v. Keene, 256 Cal. App. 2d 725, 64 Cal. Rptr. 399 (1967); and that the court "shall regard with disfavor the failure of a respondent in any case to assist the court by means of an answering brief," James v. James, 125 Cal. App. 2d, 417, 270 P.2d, 538 (1954).

I am therefore requesting this court's permission to file a respondent's brief, motion for dismissal or other responsive document.

2. Extension of Time to File:

I received Appellants' Brief and Appellants' Supplemental Appendix in Lieu of Clerk's Transcript from Flynn, Sheridan & Tabb on January 18, 1990. I have not yet received Appellants' Appendix.

I am not an attorney and I am not represented by legal counsel in any Scientology matters at this time. Neither Flynn, Sheridan & Tabb nor Contos & Bunch, both of which firms represented me throughout the litigation of this case in the lower court, will be representing me in this appeal. It is my intention to retain an attorney to represent me in this appeal if at all possible.

Appellants had five and a half years from the date the trial court issued its Decision to the date they filed their brief.

Appellants have filed another appeal, entitled Church of Scientology of California and Mary Sue Hubbard, Appellants, against Gerald Armstrong, Defendant, Bent Corydon, Appellee,Civ. No. B 038975 in Division Four in the Second Appellate District, which has its genesis in the same case underlying this appeal, Super. Ct. No. C420153, and concerns many of the same facts and issues as this appeal. I am at this time also petitioning the Division Four Court for permission to respond in that appeal.

There remain a number of issues springing from the settlement agreement, appellants' actions in violation of the agreement, and appellants' obstructive and threatening use of the agreement, which this court does not have to consider in order to grant my petition, but which I will be addressing as soon as possible by motion or other appropriate action in the Los Angeles Superior Court, which retains, pursuant to clause 20 of the settlement agreement, jurisdiction to enforce its terms.

I therefore request 90 days from the date of this court's granting of this petition in which to file a respondent's brief or other responsive document.

DATED: February 20, 1990

Respectfully submitted,

GERALD ARMSTRONG

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business adress is 7140 Buckingham Blvd., Berkeley, CA 90475.

On February 20, 1990 I caused to be served the foregoing document described as RESPONDENT'S PETITION TO FILE RESPONSE AND FOR AN EXTENSION OF TIME TO FILE RESPONSE on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Oakland, California, addressed to the persons and addresses specified on the service list attached.

Executed on February 20, 1990 at Oakland, California.

____

SERVICE LIST

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE
3580 Wilshire Blvd., Room 301
Los Angeles, California 90010

ERIC M. LIEBERMAN, ESQ.
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
740 Broadway, Fifth Floor
New York, New York 10003-9518

MICHAEL LEE HERTZBERG, ESQ.
275 Madison Avenue
New York, New York 10016

MICHAEL J. FLYNN, ESQ.
FLYNN, SHERIDAN & TABB
One Boston Place, 26th Floor
Boston, Massachusetts 02108

JULIA DRAGOJEVIC, ESQ.
CONTOS & BUNCH
5855 Topanga Canyon Blvd., #400
Woodland Hills, California 91367

CLERK OF THE SUPERIOR COURT
111 North Hill Street
Los Angeles, California 90012

filed 3-1-

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY OF CALIFORNIA and MARY SUE HUBBARD,
Appellants,
v.
GERALD ARMSTRONG,
Defendant,
BENT CORYDON,
Appellee.

Case No. B038975
LASC No. C420153

DEFENDANT'S PETITION FOR PERMISSION TO FILE RESPONSE AND FOR TIME TO FILE

I am the defendant Gerald Armstrong. I am petitioning this court at this time for permission to file a respondent's brief in this appeal and for time in which to file such a brief or other responsive document.

1. Permission to File:

The unusual need for this court's permission to file a respondent's brief arises from a condition contained in a document entitled MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT signed by me December 6, 1986, a copy of which is attached hereto as Exhibit A. I have no objection to this document being unsealed.

Para. 4B of the settlement agreement states in part that I waive "any rights [I] may have to oppose (by responding brief or any other means) any further appeals taken by the Church of Scientology." I have recently become convinced that it is a fraud upon the court to not advise it that the defendant, who has an interest in the outcome of this appeal, is prohibited from filing a respondent's brief or other responsive document. I am also now convinced that my right to file a responsive document to protect my rights is not something that can be taken away by such a settlement agreement.

I am therefore requesting this court's permission to file a respondent's brief or other responsive document.

2. Extension of Time to File:

I received the Reply Brief of Appellants and Response to Cross Appeal from the law firm of Flynn, Sheridan & Tabb on January 30, 1990. The Flynn firm has not been able to locate and may never have received any of the other briefs filed in this appeal.

I am not an attorney and I am not represented by legal counsel in any Scientology matters at this time. Neither Flynn, Sheridan & Tabb nor Contos & Bunch, both of which firms represented me throughout the litigation of this case in the lower court, will be representing me in this appeal. It is my intention to retain an attorney to represent me in this appeal if at all possible.

Appellants have also filed in Division Three of the Second Appellate District an appeal, Civ. No. B025920, from the decision of the trial court in the same case, Super. Ct. No. C420153, from which this appeal arises. I have at this time petitioned the Division Three Court for permission to respond in that appeal.

There remain a number of issues springing from the settlement agreement, appellants' actions in violation of the agreement, and appellants' obstructive and threatening use of the agreement which this court does not have to consider in order to grant my permission, but which I will be addressing as soon as possible by motion or other appropriate action in the Los Angeles Superior Court, which retains, pursuant to clause 20 of the settlement agreement, jurisdiction to enforce its terms.

I therefore request 60 days from the date of this court's granting of this petition in which to file a respondent's brief or other responsive document.

DATED: February 21, 1990

Respectfully submitted,

GERALD ARMSTRONG

Gerald Armstrong
6838 Charing Cross Road
Berkeley, CA 94705
(415) 849-0929

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6838 Charing Cross Road, Berkeley, CA 94705.

On February 21, 1990 I caused to be served the foregoing document described as DEFENDANT'S PETITION FOR PERMISSION TO FILE RESPONSE AND FOR TIME TO FILE on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Oakland, California, addressed to the persons and addresses specified on the service list attached.

Executed on February 21, 1990 at Oakland, California.

B. Sparks

SERVICE LIST

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR
3580 Wilshire Blvd., Room 301
Los Angeles, California 90010

ERIC M. LIEBERMAN, ESQ.
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
740 Broadway, Fifth Floor
New York, New York 10003-9518

MICHAEL LEE HERTZBERG, ESQ.
740 Broadway, Fifth Floor
New York, New York 10003-9518

BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Hollywood, California 90028

TOBY L. PLEVIN, ESQ.
6380 Wilshire Blvd., Suite 1600
Los Angeles, California 90048

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, California 90272

MICHAEL J. FLYNN, ESQ.
FLYNN, SHERIDAN & TABB
One Boston Place, 26th Floor
Boston, Massachusetts 02108

JULIA DRAGOJEVIC, ESQ.
CONTOS & BUNCH
5855 Topanga Canyon Blvd., #400
Woodland Hills, California 91367

CLERK OF THE SUPERIOR COURT
111 North Hill Street
Los Angeles, California 90012

Gerald Armstrong
715 Sir Francis Drake Boulevard
San Anselmo, CA 94960
(415)456-8450
In Propria Persona

ORIGINAL

FILED
SEP 18 1995
HOWARD HANSON
MARIN COUNTY CLERK
By J. Steele, Deputy

6124

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. 157 680 **EVIDENCE IN SUPPORT OF OPPOSITION TO MOTIONS FOR SUMMARY ADJUDICATION OF 20TH CAUSE OF ACTION; AND 13TH, 16TH, 17TH & 19TH CAUSES OF ACTION OF SECOND AMENDED COMPLAINT** Date: 9/29/95 Time: 9:00 a.m. Dept: One Trial Date: Not Set

VOLUME II

DECLARATION OF GERALD ARMSTRONG

I, Gerald Armstrong, declare:

1. I am the defendant and cross-complainant in the case of Church of Scientology of California v. Gerald Armstrong, Los Angeles Superior Court No. C420153. I have been involved in litigation with various Scientology entities, hereinafter referred to as "the organization," since 1982. Until December 1986 I was represented in this litigation by the law firms of Flynn, Joyce & Sheridan (now Flynn, Sheridan & Tabb) in Boston, Massachusetts and Contos & Bunch in Woodland Hills, California. Michael Flynn, my attorney in Armstrong was the prime mover in much of the organization-related litigation throughout the U.S.

2. The legal battle waged by the organization was abusive, menacing and debilitative. The organization sued Mr. Flynn or his firm many times, filed countless false sworn statements about Mr. Flynn and me, and attempted to frame both of us and bring false criminal charges against us.

3. At the beginning of December 1986 an agreement was reached in Los Angeles between the organization and Mr. Flynn to settle most of the cases in which he had been involved either as counsel or party. I was then working in the Flynn, Joyce & Sheridan firm, so was aware that settlement talks were occurring, and I had reached an agreement with Mr. Flynn on a monetary figure to settle my lawsuit with the organization. Such talks had occurred a number of times over the prior four years.

4. On December 5 I was flown to Los Angeles, as were several other of Mr. Flynn's clients with claims against the organization, to participate in a "global settlement." After my arrival in LA I was shown a copy of a document entitled "Mutual Release of All Claims and Settlement Agreement,"

hereinafter referred to as "the settlement agreement," and some other documents, which I was expected to sign.

5. The settlement agreement, attached hereto as Exhibit A, has now become a public document, and it and its effects are issues in various lawsuits now pending. I am making this declaration to explain why I signed such a patently offensive document, to clarify what my present legal situation is regarding the agreement and the organization, and to assist in the resolution of the Scientology conflict. I am waiving the attorney-client privilege between Mr. Flynn and me only as to our conversations concerning the settlement agreement and the settlement.

6. Upon reading the settlement agreement draft I was shocked and heartsick. I told Mr. Flynn that the condition of "strict confidentiality and silence with respect to [my] experiences with the [organization]" (settlement agreement, para. 7D), since it involved over seventeen years of my life, was impossible. I told him that the "liquidated damages" clause (para. 7D) was outrageous; that pursuant to the settlement agreement I would have to pay $50,000.00 if I told a doctor or psychologist about my experiences from those years, or if I put on a job resume what positions I had held during my organization years. I told Mr. Flynn that the requirements of non-amenability to service of process (para. 7H) and non-cooperation with persons or organizations adverse to the organization (paras. 7G ,10) were obstructive of justice. I told him that I felt that agreeing to leave the organization's appeal of the decision in Armstrong and not respond to any subsequent appeals (para. 4B) was unfair to the courts and all the people who had been helped by the decision. I told Mr. Flynn that an affidavit the organization was demanding that I sign along with the settlement agreement was false. The document, which I do not have, stated, inter alia, that my

disagreements with the organization had been with prior management and not with the then current leadership. In fact there had been no management change and I had the same disagreements with the organization's "fair game" policies and actions which had continued without change up to the time of the settlement. I told him that I was being asked to betray everything and everyone I had fought for against organization injustice.

7. In answer to my objections to the settlement agreement Mr. Flynn said that the silence and liquidated damages clauses, and anything which called for obstruction of justice were not worth the paper they were printed on. He said the same thing a number of times and a number of ways; e.g., that I could not contract away my Constitutional rights; that the conditions were unenforceable. He said that he had advised the organization attorneys that those conditions in the settlement agreement were not worth the paper they were printed on, but that the organization, nevertheless, insisted on their inclusion in the settlement agreement and would not agree to any changes. He pointed out the clauses concerning my release of all claims against the organization to date and its release of all claims against me to date (paras. 1, 4, 5, 6, 8) and said that they were the essential elements of the settlement and were what the organization was paying for.

8. Mr. Flynn also said that everyone was sick of the litigation and wanted to get on with their lives. He said that he was sick of the litigation, the threats to him and his family and wanted out. He said that as a part of the settlement he and all co-counsels had agreed to not become involved in organization-related litigation in the future. He expressed a deep concern that the courts in this country cannot deal with the organization and its lawyers and their contemptuous abuse of the justice system. He said that if I didn't sign the documents all I had to look forward to was more years of

harassment and misery. One of Mr. Flynn's other clients, who was in the room with us during this discussion, yelled at me, accusing me of killing the settlement for everyone, and that everyone else had signed or would sign, and everyone else wanted the settlement. Mr. Flynn said that the organization would only settle with everyone together; otherwise there would be no settlement. He did agree to ask the organization to include a clause in my settlement agreement allowing me to keep my creative works relating to L. Ron Hubbard or the organization (para. 7L).

9. Mr. Flynn said that a major reason for the settlement's "global" form was to give the organization the opportunity to change its combative attitude and behavior by removing the threat he and his clients represented to it. He argued that the organization's willingness to pay us substantial sums of money, after its agents and attorneys had sworn for years to pay us "not one thin dime" was evidence of a philosophic shift within the organization. I argued that the settlement agreement evidenced the unchanged philosophy of fair game, and that if the organization did not use the opportunity to transform its antisocial nature and actions toward its members, critics and society I would, a few years hence, because of my knowledge of organization fraud and fair game, be again embroiled in its litigation.and targeted for extralegal attacks.

10. Regarding the affidavit the organization required that I sign, Mr. Flynn said that the "disagreement with prior management" could be rationalized as being a disagreement with L. Ron Hubbard, and since Mr. Hubbard had died in January 1986 it could be said that I no longer had that disagreement. Mr. Flynn said that the organization's attorneys had promised that the affidavit, which all the settling litigants were signing, would only be used by the organization if I began attacking it after the settlement, and

since I had no intention of attacking the organization the affidavit would never see the light of day.

11. During my meeting with Mr. Flynn in Los Angeles I found myself facing a dilemma which I reasoned through in this way. If I refused to sign the settlement agreement and affidavit all the other settling litigants, many of whom had been flown to Los Angeles in anticipation of a settlement, would be extremely disappointed and would continue to be subjected to organization harassment for an unknown period of time. I had been positioned in the settlement drama as a deal-breaker and would undoubtedly lose the support of some if not all of these litigants, several of whom were key witnesses in my case against the organization. Although I was certain that Mr. Flynn and my other lawyers would not refuse to represent me if I did not sign the documents I also knew that they all would view me as a deal-breaker and they would be as disappointed as the other litigants in not ending the litigation they desperately wanted out of. The prospect of continuing the litigation with unhappy and unwilling attorneys on my side, even though my cross-complaint was set for trial within three months, was distressing. On the other hand, if I signed the documents, all my co-litigants, some of whom I knew to be in financial trouble, would be happy, the stress they felt would be reduced and they could get on with their lives. Mr. Flynn and the other lawyers would be happy and the threat to them and their families would be removed. The organization would have the opportunity they said they desired to clean up their act and start anew. I would have the opportunity to get on with the next phase of my life and the financial wherewithal to do so. I was also not unhappy to at that time ot have to continue to testify in all the litigation nor to respond to the media's frequent questions. If the organization continued its fair game

practices toward me I knew that I would be left to defend myself and I accepted that fact. So, armed with Mr. Flynn's advice that the conditions I found so offensive in the settlement agreement were not worth the paper they were printed on, and the knowledge that the organization's attorneys were also aware of that legal opinion, I put on a happy face and the following day went through the charade of a videotaped signing.

12. Before signing the settlement agreement I also consulted with another attorney who advised me that the agreement, including the liquidated damages clause, to have any validity must be reciprocal. He stated that if any agent of the organization said anything to anyone concerning my experiences in the organization or about my case the organization was liable to me for $50,000.00 for each such instance.

13. In my declaration of March 15, 1990 I detailed my post-settlement involvement with the organization and what I knew of its attempts to enforce by threat the settlement agreement conditions and its acts against me in violation of the letter and spirit of the agreement. At paragraph 44 of the declaration I recount a telephone call to me from organization attorney Larry Heller on November 20, 1989 in which he stated that the organization had signed a non-disclosure agreement as I had and had lived up to its agreement. In the motion dated October 31, 1989 of Author Services, Inc. to prevent the taking of my deposition in the case of Bent Corydon v. Church of Scientology International, Inc., et al. Los Angeles Superior Court No. C694401 (Exhibit D to my 3-15-90 declaration), Mr. Heller states: "One of the key ingredients to completing these settlements, insisted upon by all parties involved, (emphasis in original) was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences within the Church of Scientology; (2) any knowledge possessed by the

Scientology entities concerning those staff members or parishioners; and (3) the terms and conditions of the settlements themselves."

14. I filed the March 15 declaration on March 23 as an exhibit to a document entitled "Defendant's Reply To Appellants' Opposition To Petition For Permission To File Response and For Time" in the California Court of Appeal, Second Appellate District, Division Four in the case of Church of Scientology of California, Appellants v. Gerald Armstrong; Bent Corydon, Appellee; Civ. No. B 038975. On the motion of Mr. Corydon, a present litigant against the organization, Los Angeles Superior Court Judge Bruce R. Geernaert, on November 9, 1988 unsealed the Armstrong court file, which had been sealed since the settlement, allowing Mr. Corydon and his attorneys to examine and copy the file for use in his litigation. The organization appealed Judge Geernaert's ruling, filing an opening brief on October 11, 1989. The organization based its argument that the court file should remain sealed on its averment that "[a]n integral, indispensable part of [the] settlement was the sealing of the court's record." (Appellants Brief, p4). On March 1, 1990 I filed a document entitled "Defendant's Petition For Permission To File and For Time To File" (3-15-90 Declaration, Exhibit Q), requesting permission to file a response to the organization's appeal. On March 6 the organization filed "Appellants' Opposition To Defendant's Petition For Permission To File Response and For Time To File," attached hereto as Exhibit B. In its argument for denial of my request to file a response the organization asserted that "the sealing of the file was an essential part of the settlement agreement, pursuant to which Mr. Armstrong received a substantial sum of money in settlement of his cross-complaint." (Opp. p2) My reply to the organization's opposition is attached hereto as Exhibit C. On April 9, 1990 in a letter to the Clerk of the Supreme Court of

California the Clerk of the Court of Appeal for the Second Appellate District requested that the B038975 appeal be transferred from Division Four to Division Three. The Division Three Court already had before it the case of Church of Scientology of California v. Gerald Armstrong, Civ. No. B025920, the organization's appeal of the Los Angeles Superior Court's 1984 decision (3-15-90 Declaration, Ex. A) in the case brought against me in 1982. On March 9, the Division Three Court had granted a similar "Petition For Permission To Respond" I had filed in that appeal, and on July 9 my attorney, Michael Walton, filed a respondent's brief on my behalf. On October 16 the Division Three Court granted my petition to respond in the B038975 appeal.

15. The 3-15-90 declaration was also filed on March 19, 1990 as an exhibit to a motion, attached hereto as Exhibit D, brought by Mr. Corydon "for an order directing non-interference with witnesses and disqualification of counsel" in Corydon, supra. On March 27 the organization filed an opposition, attached hereto as Exhibit E, to Mr. Corydon's motion, supported by, inter alia, a declaration of attorney Lawrence Heller dated 3-27-90, attached hereto as Exhibit F, and a declaration of Kenneth Long dated 3-26-90, attached hereto as Exhibit G. At paragraph 13 of his declaration Mr. Heller states: "13. The confidentiality provisions of the Armstrong Settlement Agreement are nor (sic) reciprocal in nature. Mr. Armstrong does have duties of confidentiality under the terms of the Armstrong settlement and paragrapg (sic) 10 appears to be an accurate recitation of those duties. However, there are no reciprocal duties of confidentiality under the terms of the Armstrong Settlement Agreement that apply to any of the Church parties in the settlement. 14. An important part of the Armstrong settlement was that the Church was not bound by the same confidentiality provisions as

Armstrong and that the Church parties remain free to comment upon and use information pertaining to Mr. Armstrong's experiences in the Church of Scientology. At the time of the Armstrong settlement, information from Mr. Armstrong was being used in a number of cases around the world. It was important to the Church parties to the Armstrong settlement that they remain free to defend themselves against allegations supported by information originating from Armstrong prior to the settlement. I discussed this aspect of the confidentiality provisions the (sic) settlement agreement with Armstrong's counsel, Michael J. Flynn, during my settlement negotiations with him in 1986 and it was clearly understood by both sides of the negotiations that the confidentiality provisions were not to be reciprocal. Any assertions to the contrary now being made by Amrstrong (sic) are false." Mr. Long states in his declaration at paragraph 5: " There is no provision in the settlement agreement with Armstrong which would prohibit CSC from using information obtained through litigation with Armstrong in seeking legal remedies for wrongs committed by third parties." The organization's opposition (Ex. E) states at p. 14 that "an important part of the Settlement Agreement revolved around the continuing ability of the Church to refute the often bizarre allegations made by Mr. Armstrong. Thus, this issue was addressed during the settlement negotiations, with the result that no (emphasis in original) clause was included in the agreement preventing the Church from such action."

16. In his 3-27-90 declaration Mr. Heller, in response to my 3-15-90 declaration in which I recount the three telephone conversations we had in October and November 1989, also avers that "[a]t no time did I threaten him with a lawsuit, speak to him in a threatening manner or even mention a lawsuit. The Court should note Armstrong never says I threatened him with

litigation in his declaration. (emphasis in original). .... However, to my recollection, all of this took place during the course of one (1) telephone conversation." (Ex. F. paras. 10,11) The organization's opposition (Ex. E) states at p. 11: "Even if Gerald Armstrong's declaration....were fully (emphasis in original) truthful (which it is not -- see Declaration of Lawrence E. Heller attached) (parens in original), the acts ascribed to Mr. Heller in his discussions with Armstrong must be construed as ethical and legal. Regardless, as can be seen from the Declaration of Lawrence E. Heller attached hereto, Heller recalls having only one (emphasis in original)(1) telephone call with Armstrong wherein he did, in fact, offer to provide him with an attorney to represent him at his deposition, which Armstrong promptly refused. Mr. Heller did not (emphasis in original) offer to have his client pay for that attorney or offer to indemnify Armstrong for sanctions which might be imposed (sanctions were never discussed) (parens in original)." The opposition also states that "Armstrong nowhere in his declaration indicates Heller threatened him with litigation." (Ex. E, p.12)

17. In his 3-26-90 declaration Kenneth Long repeats the proof he propounded in his affidavits (3-15-90 Dec. Exs. F,G,H,J,K) filed in 1987 in the case of Church of Scientology of California v. Russell Miller & Penguin Books Limited in the High Court of Justice in London, England, Case no. 6140, that I "had knowingly violated orders issued by Los Angeles Superior Court." Mr. Long states (Ex. G, para. 3) that : "[t]aken together, my October, 1987 affidavits demonstrate that:

a. In August, 1982, Armstrong was ordered by Judge John L. Cole to surrender certain documents and materials to the custody of the Clerk of the Los Angeles Superior Court.

b. Armstrong later attested on numerous occasions, that he had surrendered all such documents and materials, and that he had none in his possession.

c. In January, 1987, following settlement of Scientology (sic) of California ("CSC"), Armstrong turned over to CSC all Church-related documents in his possession. I personally inspected the documents turned over by Armstrong, and found a number of copies of the documents which Armstrong had previously sworn that he had surrendered to the Clerk of the Court.

d. Based on my discovery of these documents, I concluded that Armstrong had intentionally perjured himself on numerous occasions, and had as well knowingly violated orders issued by judges at all levels ranging from the Los Angeles Superior Court to the Supreme Court of the United States."

Mr. Long then explains that his "affidavits, therefore, were required to detail the elements of the breach of confidence claim against Miller and Penguin, and the claim could not have been brought without explaining the underlying actions taken by Armstrong."

18. At paragraph 7 of the 3-15-90 declaration I state that during our conversation of October 25, 1989 Mr. Heller "said I had a contractual obligation to the organization, which it had paid a lot of money for, not to divulge confidential information, and that if I answered (deposition questions about such things as L. Ron Hubbard's misrepresentations) I would have breached the settlement agreement and may get sued." At para. 44 of the 3-15-90 declaration I state that "Mr. Heller reiterated at the end of our conversation that if I start to testify, for example about the Hubbard biography project, or things he and the organization consider irrelevant, they

will carefully examine their rights as to what action they will take." At para 51 I state that "[o]n February 15, 1990 I received a telephone call from attorney Michael Tabb, a partner of Michael Flynn, who said that he had been called by Larry Heller who told him that the organization considered I had violated the settlement agreement by being in the courthouse to be served in Yanney, that they intended to prove it, and that I would be sued." (See also para. 48 where I describe being served with a trial subpoena in the case of Religious Technology Center, et al. v. Joseph Yanney, LASC No. C690211.) In a declaration I executed on March 26, 1990, a copy of which is attached hereto as Exhibit H, I describe at para 4 another instance of threatened litigation from Mr. Heller. "On March 21 I spoke by telephone with attorney Michael Flynn, counsel of record in Armstrong, who said that he had been called by Mr. Heller two or three weeks before. Mr. Heller told Mr. Flynn that I was sitting in the courtroom in the Yanney trial and that if I testified in Yanney I would be in violation of the settlement agreement and I would be sued. Mr. Heller asked Mr. Flynn to call me and tell me not to testify. Mr. Flynn said no. The day I had been present at the Yanney trial was March 5, 1990."

19. On April 4, 1990 I was served with a subpoena duces tecum applied for by Author Services, Inc. and Bridge Publications, Inc., two organization entities, a copy of which is attached hereto as Exhibit I, ordering my production of any sound recordings or other records I possessed of my telephone conversations with Mr. Heller, at a deposition in Corydon on April 24. Toby Plevin, Mr. Corydon's attorney, had apparently stated at the hearing of the motion for an order directing non-interference with witnesses (see para. 15) that I had a recording of my side of one or more of my conversations with Mr. Heller. Ms. Plevin had already scheduled my

deposition, which had been the subject of the organization's motion of October 31, 1989 to prevent its being taken (see para. 13), for April 24 and 25. The deposition went forward on those days and I produced for the organization my notes of Mr. Heller's telephone conversations with me of October 23 and 25 and November 20, 1989, attached hereto as Exhibits J, K and L respectively,and a cassette recording of my side of the November 20, 1989 conversation, a transcript of which is attached hereto as Exhibit M. I can translate and interpret the scrawled notes if called upon to do so. It is my opinion that the notes and transcript show that my account in the 3-15-90 declaration of my communications with Mr. Heller is accurate.

20. In the 3-15-90 declaration at para. 30 I stated that "I consider that [Kenneth] Long's assertions of what documents were sealed, when they were sealed and where they originated are erroneous, and his conclusion that I had violated the Los Angeles Superior Court's sealing orders fallacious." Mr. Long based his proof that I had violated the sealing order on three "Helen O'Brien letters," which were among the documents delivered to the Court by my attorneys in September 1982, hereinafter referred to as the "Armstrong documents." Mr. Long found among the documents I delivered to the organization in January 1987 pursuant to the settlement agreement photocopies of the three letters. He concluded that I had retained copies of the letters when the Armstrong documents had been delivered to the Court where they remained until the settlement. And he concluded that, because Mr. Miller had copies of the same Helen O'Brien letters, I had violated the Court's sealing orders. I first saw the three letters, I believe in 1980, in Los Angeles in the possession of Helen O'Brien, who had been a major figure in Hubbard's organization in the United States in the early 1950's. They were part of a collection of documents I arranged to purchase from Ms. O'Brien for

L. Ron Hubbard's archives. After purchasing all of the Helen O'Brien documents I copied them and provided them to Omar Garrison in 1981 for his use in the Hubbard biography project. Some of them I retrieved from Mr. Garrison in the summer of 1982 and sent to my attorneys in anticipation of their need in litigation with the organization. These were the Armstrong documents. Prior to selling her documents to the Hubbard archives Ms. O'Brien allowed a collector of Hubbardinia, Jamie Macuuchi (sp?), who had also wanted to purchase her collection, to copy them. The copies Mr. Macuuchi made were recopied and distributed to many people, including, as shown in the Long affidavits filed in Miller, supra, Mr. Newman, Mr. Caven-Atack and Mr. Miller. In 1986 I was also sent a copy of the Macuuchi/O'Brien letters, and these were included as Mr. Long states in the documents I delivered to the organization in January 1987. I believe that the facts in this matter show that I complied with the LA Superior Court's orders and any sealing order issued by any court up to the Supreme Court of the United States, and that I fulfilled my part of the settlement agreement.

21. Attached hereto as Exhibit N is a copy of a "final adverse ruling" dated July 8, 1988 from the Internal Revenue Service to The Church of Spiritual Technology denying its application for tax exempt status. At page 3 of the ruling, which cites several times to Armstrong, the IRS states:

"In support of the protest (protest conference was held in January 1987) to our initial adverse ruling, we were supplied with copies of affidavits dated December 4, 1986, from Gerald Armstrong and Laurel Sullivan. Ms. Sullivan was the person in charge of the MCCS project (the organization's Mission Corporate Category Sort-out, the purpose of which was to devise a new organizational structure to conceal L. Ron Hubbard's continued control). The affidavits state that the new church management 'seems to have returned to the basic and lawful policies and procedures as laid out by the founder of the religion, L. Ron Hubbard.' The affidavits conclude as follows: 'Because of the foregoing, I no longer have any conflict with the Church of Scientology or individual members affiliated with the Church. Accordingly I have executed a mutual release agreement with the Church of Scientology and sign this affidavit in order to signify that I have no quarrel with the Church of Scientology or any of its members.'" Fortunately the IRS did not give much weight to the affidavits, which had been used by one of the organization's spinoff corporations (COST) in immediate violation of the promise of Mr. Flynn that they would not be so used (para. 10 supra), stating at page 4 of its ruling that "[t]he fact that Mr. Armstrong and Ms. Sullivan elected to settle their personal differences with Scientology does not detract from the relevance of the statements they previously made concerning Mr. Hubbard's use of Scientology organizations to serve his private interest."

22. During the April 24 and 25, 1990 deposition in Corydon I was shown and authenticated several documents, copies of three of which, all declarations filed in Armstrong, are attached hereto as Exhibits O, P and Q. The declarations and their exhibits deal mainly with three major organization subjects: a. the use by the organization of supposedly confidential statements made by individuals undergoing organization therapy (auditing) against the individuals; b. obstruction of justice; c. "fair game", pursuant to which the auditing confidentiality violations and the obstruction of justice are carried out. Fair game is the name given by L. Ron Hubbard to his philosophy of opportunistic hatred directed at anyone he didn't like. Over his entire adult life he used hatred and acts which flow from hatred (lying, cheating, stealing, compromising, entrapping, obstructing,

bullying, blackmailing, destroying) as the solution to his problems -- with doctors, psychologists, government agencies, the courts, critics, his family and innocent individuals. The people who have replaced Mr. Hubbard since his retirement from active management employ the same philosphy of opportunistic hatred in dealing with the problems they inherited from him and those they created newly as they employed his fair game solution. I have been the target of Hubbardian fair game for many years and have a deep understanding of the philosophy and acts which flow from it. In truth I do not represent the slightest threat to the organization. I do, however, represent a threat to fair game by being willing to be its target. The organization will exist long after fair game is renounced and gone. The organization as a hate group cannot last because fair game is such a silly and ineffective philosophy. Fair play is a better deal.

23. Exhibit O is a declaration I executed on October 11, 1986 to show that the organization had violated the LA Superior Court's orders in Armstrong to produce the files its intelligence bureau maintained on me. The declaration details years of fair game operations directed at me and the organization's obstruction of legitimate discovery concerning the operations.

24. Exhibit P is a declaration I executed on November 1, 1986 and filed in support of an opposition to the organization's motion for summary adjudication. The declaration lays out my knowledge from 1969 through 1986 of the fraud of promised sanctity of information divulged in auditing and the actual use made of this information pursuant to fair game.

25. Exhibit Q is a declaration I executed on November 18, 1986 and filed in support of an opposition to the organization's motion to continue the trial of my cross-complaint which was then set for January 19, 1987. The declaration, which is the last I prepared prior to the December 1986

settlement, deals with the organization's obstruction of justice, acts of opportunistic hatred, and the alteration of my life by its acts.

26. The Armstrong court file contains overwhelming proof that L. Ron Hubbard lied about his past, his status, his credentials, his health, his philosophy, the efficacy of his therapy, and his intent. The file contains overwhelming proof of fair game in action through this year, of the violations of auditing sanctity at least through 1986, and of organized obstruction of justice on a massive scale to this date. It contains the story of an individual of no particular power or position who spoke out against the lies and against fair game. It is a story of intelligence operations, black propaganda, threats, acts of violence, spiritual and psychological perversions, and bad apples from the lawyer barrel. It contains a picture of what may happen to anyone of no particular power or position who dares to speak out against lies and fair game. The contents of the file are relevant to anyone who was drawn into the organization, either as a client or as a staff member, by any representation made by the organization. The contents of the file are relevant to anyone who has ever undergone auditing (and everyone in the organization does) and to anyone who is considering becoming involved with the organization. The contents are relevant to anyone involved in litigation with the organization or seeking to correct the organization's abuses. The file is relevant to the media, sociologists, psychologists, courts, law enforcement, and legislatures.

27. The organization was given a period of years following the settlement to clean up its act. The other settling litigants and I honored our agreements, removing ourselves as threats and allowing the organization the opportunity to change its combative attitude and behavior (see para 9, supra). It did not use its opportunity for anything but opportunism. Since

the settlement it has itself flagrantly violated court sealing orders, its lawyers have threatened me with lawsuits, it has continued its black propaganda attack on me, it has filed false affidavits about me, and it has used my good will to obstruct justice in countless courts. It is my opinion that full disclosure, including the unsealing of the Armstrong file and the publication of this and my other declarations, will not harm the organization in the least. It is my opinion that full disclosure will relieve the organization of the burden of concealing its fair game philosophy and its past, and relieve it of its unfounded fear of what disclosure might portend. And disclosure will eliminate possible further fair game acts to prevent disclosure. It is my opinion that there need not be hostility to achieve peace.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 25th day of December, 1990, at Sleepy Hollow, California.

Gerald Armstrong

MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT

1. This Mutual Release of All Claims and Settlement Agreement is made between Church of Scientology International (hereinafter "CSI") and Gerald Armstrong, (hereinafter "Plaintiff") Cross-Complainant in Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153. By this Agreement, Plaintiff hereby specifically waives and releases all claims he has or may have from the beginning of time to and including this date, including all causes of action of every kind and nature, known or unknown for acts and/or omissions against the officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel of CSI as well as the Church of Scientology of California, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Religious Technology Center, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Author Services, Inc., its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and its trustee; and Mary Sue Hubbard, (all hereinafter collectively referred to as the

19. A.

"Releasees"). The parties to this Agreement hereby agree as follows:

2. It is understood that this settlement is a compromise of doubtful and disputed claims, and that any payment is not to be construed, and is not intended, as an admission of liability on the part of any party to this Agreement, specifically, the Releasees, by whom liability has been and continues to be expressly denied. In executing this settlement Agreement, Plaintiff acknowledges that he has released the organizations, individuals and entities listed in the above paragraph, in addition to those defendants actually named in the above lawsuit, because among other reasons, they are third party beneficiaries of this Agreement.

3. Plaintiff has received payment of a certain monetary sum which is a portion of a total sum of money paid to his attorney, Michael J. Flynn. The total sum paid to Mr. Flynn is to settle all of the claims of Mr. Flynn's clients. Plaintiff's portion of said sum has been mutually agreed upon by Plaintiff and Michael J. Flynn. Plaintiff's signature below this paragraph acknowledges that Plaintiff is completely satisfied with the monetary consideration negotiated with and received by Michael J. Flynn. Plaintiff acknowledges that there has been a block settlement between Plaintiff's attorney, Michael J. Flynn, and the Church of Scientology and Churches and entities related to the Church of Scientology, concerning all of Mr. Flynn's clients who were in litigation with any Church of Scientology or related entity. Plaintiff has received a portion of this block

amount, the receipt of which he hereby acknowledges. Plaintiff understands that this amount is only a portion of the block settlement amount. The exact settlement sum received by Plaintiff is known only to Plaintiff and his attorney, Michael J. Flynn, and it is their wish that this remain so and that this amount remain confidential.

Signature line for Gerald Armstrong

4. For and in consideration of the above described consideration, the mutual covenants, conditions and release contained herein, Plaintiff does hereby release, acquit and forever discharge, for himself, his heirs, successors, executors, administrators and assigns, the Releasees, including Church of Scientology of California, Church of Scientology International, Religious Technology Center, all Scientology and Scientology affiliated organizations and entities, Author Services, Inc. (and for each organization or entity, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel); L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and trustee; and Mary Sue Hubbard, and each of them, of and from any and all claims, including, but not limited to, any claims or causes of action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153 and all demands, damages, actions and causes of actions of every kind and nature, known or unknown,

for or because of any act or omission allegedly done by the Releasees, from the beginning of time to and including the date hereof. Therefore, Plaintiff does hereby authorize and direct his counsel to dismiss with prejudice his claims now pending in the above referenced action. The parties hereto will execute and cause to be filed a joint stipulation of dismissal in the form of the one attached hereto as Exhibit "A".

A. It is expressly understood by Plaintiff that this release and all of the terms thereof do not apply to the action brought by the Church of Scientology against Plaintiff for Conversion, Fraud and other causes of action, which action has already gone to trial and is presently pending before the Second District, Third Division of the California Appellate Court (Appeal No. B005912). The disposition of those claims are controlled by the provisions of the following paragraph hereinafter.

B. As of the date this settlement Agreement is executed, there is currently an appeal pending before the California Court of Appeal, Second Appellate District, Division 3, arising out of the above referenced action delineated as Appeal No. B005912. It is understood that this appeal arises out of the Church of Scientology's complaint against Plaintiff which is not settled herein. This appeal shall be maintained notwithstanding this Agreement. Plaintiff agrees to waive any rights he may have to take any further appeals from any decision eventually reached by the Court of Appeal or any rights he may have to oppose (by responding brief or any other means) any further appeals taken by the Church of

Scientology of California. The Church of Scientology of California shall have the right to file any further appeals it deems necessary.

5. For and in consideration of the mutual covenants, conditions and release contained herein, and Plaintiff dismissing with prejudice the action Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153, the Church of Scientology of California does hereby release, acquit and forever discharge for itself, successors and assigns, Gerald Armstrong, his agents, representatives, heirs, successors, assigns, legal counsel and estate and each of them, of and from any and all claims, causes of action, demands, damages and actions of every kind and nature, known or unknown, for or because of any act or omission allegedly done by Gerald Armstrong from the beginning of time to and including the date hereof.

6. In executing this Agreement, the parties hereto, and each of them, agree to and do hereby waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. Further, the undersigned hereby agree to the following:

A. The liability for all claims is expressly denied by the parties herein released, and this final compromise and settlement thereof shall never be treated as an admission of liability or responsibility at any time for any purpose.

B. Plaintiff has been fully advised and understands that the alleged injuries sustained by him are of such character that the full extent and type of injuries may not be known at the date hereof, and it is further understood that said alleged injuries, whether known or unknown at the date hereof, might possibly become progressively worse and that as a result, further damages may be sustained by Plaintiff; nevertheless, Plaintiff desires by this document to forever and fully release the Releasees. Plaintiff understands that by the execution of this release no further claims arising out of his experience with, or actions by, the Releasees, from the beginning of time to and including the date hereof, which may now exist or which may exist in the future may ever be asserted by him or on his behalf, against the Releasees.

C. Plaintiff agrees to assume responsibility for the payment of any attorney fee, lien or liens, imposed against him past, present, or future, known or unknown, by any person, firm, corporation or governmental entity or agency as a result of, or growing out of any of the matters referred to in this release. Plaintiff further agrees to hold harmless the parties herein released, and each of them, of and from any liability arising therefrom.

D. Plaintiff agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A" to this Agreement, including but not limited to any tapes, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. The attorneys for Plaintiff, subject to the ethical limitations restraining them as promulgated by the state or federal regulatory associations or agencies, agree not to disclose any of the terms and conditions of the settlement negotiations, amount of the settlement, or statements made by either party during settlement conferences. Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of $50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages are hereto acknowledged by Plaintiff.

E. With exception to the items specified in Paragraph 7(L), Plaintiff agrees to return to the Church of Scientology International at the time of the consummation of this Agreement, all materials in his possession, custody or control (or within the possession, custody or control of his attorney, as well as third parties who are in possession of the described documents), of any nature, including originals and all copies or summaries of documents defined in Appendix "A" to this Agreement, including but not limited to any tapes, computer disks, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above, all evidence of any nature, including evidence obtained from the named defendants through discovery, acquired for the purposes of this lawsuit or any lawsuit, or acquired for any other purpose concerning any Church of Scientology, any financial or administrative materials concerning any Church of Scientology, and any materials relating personally to L. Ron Hubbard, his family, or his estate. In addition to the documents and other items to be returned to the Church of Scientology International listed above and in Appendix "A", Plaintiff agrees to return the following:

(a) All originals and copies of the manuscript for the work "Excalibur" written by L. Ron Hubbard;

(b) All originals and copies of documents commonly known as the "Affirmations" written by L. Ron Hubbard; and

(c) All documents and other items surrendered to the Court by Plaintiff and his attorneys pursuant to Judge Cole's orders of August 24, 1982 and September 4, 1982 and all documents and other items taken by the Plaintiff from either the Church of Scientology or Omar Garrison. This includes all documents and items entered into evidence or marked for identification in Church of Scientology of California v. Gerald Armstrong, Case No. C 420 153. Plaintiff and his attorney will execute a Joint Stipulation or such other documents as are necessary to obtain these documents from the Court. In the event any documents or other items are no longer in the custody or control of the Los Angeles Superior Court, Plaintiff and his counsel will assist the Church in recovering these documents as quickly as possible, including but not limited to those tapes and other documents now in the possession of the United States District Court in the case of United States v. Zolin, Case No. CV

85-0440-HLH(Tx), presently on appeal in the Ninth Circuit Court of Appeals. In the event any of these documents are currently lodged with the Court of Appeal, Plaintiff and his attorneys will cooperate in recovering those documents as soon as the Court of Appeal issues a decision on the pending appeal.

To the extent that Plaintiff does not possess or control documents within categories A-C above, Plaintiff recognizes his continuing duty to return to CSI any and all documents that fall within categories A-C above which do in the future come into his possession or control.

F. Plaintiff agrees that he will never again seek or obtain spiritual counselling or training or any other service from any Church of Scientology, Scientologist, Dianetics or Scientology auditor, Scientology minister, Mission of Scientology, Scientology organization or Scientology affiliated organization.

G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology.

H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed.

I. The parties hereto agree that in the event of any future litigation between Plaintiff and any of the organizations, individuals or entities listed in Paragraph 1 above, that any past action or activity, either alleged in this lawsuit or activity similar in fact to the evidence that was developed during the course of this lawsuit, will not be used by either party against the other in any future litigation. In other words, the "slate" is wiped clean concerning past actions by any party.

J. It is expressly understood and agreed by Plaintiff that any dispute between Plaintiff and his counsel as to the proper division of the sum paid to Plaintiff by his attorney of record is between Plaintiff and his attorney of record and shall in no way affect the validity of this Mutual Release of All Claims and Settlement Agreement.

K. Plaintiff hereby acknowledges and affirms that he is not under the influence of any drug, narcotic, alcohol or other mind-influencing substance, condition or ailment such that his ability to fully understand the meaning of this Agreement and the significance thereof is adversely affected.

L. Notwithstanding the provisions of Paragraph 7(E) above, Plaintiff shall be entitled to retain any artwork created by him which concerns or relates to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above provided that such artwork never be disclosed either directly or indirectly, to anyone. In the event of a disclosure in breach of this Paragraph 7(L), Plaintiff shall be subject to the liquidated damages and constructive trust provisions of Paragraph 7(D) for each such breach.

8. Plaintiff further agrees that he waives and relinquishes any right or claim arising out of the conduct of any defendant in this case to date, including any of the organizations, individuals or entities as set forth in Paragraph 1 above, and the named defendants waive and relinquish any right or claim arising out of the conduct of Plaintiff to date.

9. This Mutual Release of All Claims and Settlement Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. This Agreement may be amended only by a written instrument executed by Plaintiff and CSI. The parties hereto have carefully read and understand the contents of this Mutual Release of All Claims and Settlement Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically

incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement.

11. The parties to this Agreement acknowledge the following:

A. That all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will;

B. That all parties have conducted sufficient deliberation and investigation, either personally or through other sources of their own choosing, and have obtained advice of counsel regarding the terms and conditions set forth herein, so that they may intelligently exercise their own judgment in deciding whether or not to execute this Agreement; and

C. That all parties have carefully read this Agreement and understand the contents thereof and that each reference in this Agreement to any party includes successors, assigns, principals, agents and employees thereof.

12. Each party shall bear its respective costs with respect to the negotiation and drafting of this Agreement and

all acts required by the terms hereof to be undertaken and performed by that party.

13. To the extent that this Agreement inures to the benefit of persons or entities not signatories hereto, this Agreement is hereby declared to be made for their respective benefits and uses.

14. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

15. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

16. In the event any provision hereof be unenforceable, such provision shall not affect the enforceability of any other provision hereof.

17. All references to the plural shall include the singular and all references to the singular shall include the plural. All references to gender shall include both the masculine and feminine.

18.(A) Each party warrants that they have received independent legal advice from their attorneys with respect to the advisability of making the settlement provided for herein and in executing this Agreement.

(B) The parties hereto (including any officer, agent, employee, representative or attorney of or for any party) acknowledge that they have not made any statement, representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein. Furthermore, except as expressly stated in this Agreement, the parties in executing this Agreement do not rely upon any statement, representation or promise by the other party (or of any officer, agent, employee, representative or attorney for the other party).

(C) The persons signing this Agreement have the full right and authority to enter into this Agreement on behalf of the parties for whom they are signing.

(D) The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety.

(E) The parties further agree to forbear and refrain from doing any act or exercising any right, whether existing now or in the future, which act or exercise is inconsistent with this Agreement.

19. Plaintiff has been fully advised by his counsel as to the contents of this document and each provision hereof. Plaintiff hereby authorizes and directs his counsel to dismiss with prejudice his claims now pending in the action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153.

20. Notwithstanding the dismissal of the lawsuit pursuant to Paragraph 4 of this Agreement, the parties hereto agree that the Los Angeles Superior Court shall retain

jurisdiction to enforce the terms of this Agreement. This Agreement may be enforced by any legal or equitable remedy, including but not limited to injunctive relief or declaratory judgment where appropriate. In the event any party to this Agreement institutes any action to preserve, to protect or to enforce any right or benefit created hereunder, the prevailing party in any such action shall be entitled to the costs of suit and reasonable attorney's fees.

21. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date opposite their names.

Dated: December 6, 1986

GERALD ARMSTRONG

Witness

Witness

Dated: 12/6/86

APPROVED AS TO FORM AND CONTENT:

M. J. Flynn

MICHAEL J. FLYNN
Attorney for
GERALD ARMSTRONG

Dated: December 11, 1986

for
CHURCH OF SCIENTOLOGY
INTERNATIONAL

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR
Civ. No. B 038975
(Super. Ct. No. C420153)

CHURCH OF SCIENTOLOGY OF CALIFORNIA
and MARY SUE HUBBARD,

Appellants,

-against-

GERALD ARMSTRONG,

Defendant.

BENT CORYDON,

Appellee.

Appeal from Superior Court of California
County of Los Angeles
Judge Bruce R. Geernaert

APPELLANTS' OPPOSITION TO DEFENDANT'S PETITION FOR PERMISSION TO FILE RESPONSE AND FOR TIME TO FILE

Defendant Gerald Armstrong, who did not participate in the proceedings below upon which these appeals are based and who took no appeal from the underlying orders below, has sought leave for permission to file a brief herein and for an extension of 60 days in which to do so. Defendant's petition for leave should be denied, for the reasons stated below:

B.

25

1. This appeal and cross-appeal are from orders of the Superior Court below granting in part and denying in part the applications of Bent Corydon to unseal the file in this case. The file in this case was sealed pursuant to a settlement agreement and stipulation entered into, through counsel, by the plaintiffs Church of Scientology of California and Mary Sue Hubbard, on the one hand, and the defendant, Gerald Armstrong, on the other hand. As set forth in the appellants' briefs herein, the sealing of the file was an essential part of the settlement agreement, pursuant to which Mr. Armstrong received a substantial sum of money in settlement of his cross-complaint.

Mr. Armstrong thereby explicitly agreed to, and thereby waived any objection to, the sealing of the file herein. He has no recognizable interest in the outcome of this appeal.

2. Mr. Armstrong's counsel of record in this case was informed and aware of the proceedings below initiated by Mr. Corydon. Counsel for appellants, indeed, mailed complete sets of all such papers to Mr. Armstrong's counsel. Mr. Armstrong, through his counsel, did not participate in the proceedings below, and chose not to notice an appeal from any of the orders entered below.

Mr. Armstrong did file a pleading in this Court objecting to the inclusion of certain exhibits to a document filed by Mr. Corydon on December 23, 1988, and asking this Court to seal those exhibits. Significantly, in his pleading Mr. Armstrong supported the position of the appellants herein, stating: "Numerous materials in the Armstrong case filed [sic] were sealed at the behest of both parties as part of the settlement of the case. That sealing was an intrical [sic] part of the settlement, which settlement should not be undone."

This appeal thereafter has proceeded with full briefing by the parties, the last brief having been filed on January 18, 1990. Now, over one month later, Mr. Armstrong seeks 60 days to file a brief in a proceeding over which he has exhibited little concern and asserted no legal interest, other than to maintain the seal on the file. In seeking such relief, Mr. Armstrong has apparently fired his counsel of record and is purportedly proceeding pro se, while stating that he hopes to retain new counsel in the future.

Mr. Armstrong has provided no reasons why he should be permitted to delay the proceedings in this appeal at this late date. He has not identified what interests he wishes to assert. He has not stated why he did not instruct his attorneys of record to file or seek to file a brief at the proper stages of this appeal.

Mr. Armstrong's request should be denied because of his failure to participate or assert an interest in the proceedings below, because he has waived whatever interest he may have, and because his application is untimely.

3. Mr. Armstrong further states that he is barred from filing a brief by the settlement agreement which he entered into in this case. Mr. Armstrong did waive the right to file any further briefs in opposition to positions asserted by the appellants arising out of this case. He did so freely and in

substantial settlement of his cross-complaint. He has stated no reason to be relieved from his prior agreement.

CONCLUSION

For the reasons stated above, Mr. Armstrong's "petition" should be denied in all respects.

Respectfully submitted,
Eric M Lieberman
ERIC M. LIEBERMAN
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN
740 Broadway - Fifth Floor
New York, New York 10003-9518
(212) 254-0111

MICHAEL LEE HERTZBERG
740 Broadway - Fifth Floor
New York, New York 10003-9518
(212) 982-9870

Counsel for Appellants

Dated: March 6, 1990

CERTIFICATE OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Simone Leak, being duly sworn deposes and says, that she is not a party to the action, is over 18 years of age and resides in New York, New York. That on the 6th day of March, 1990, she served the within Appellants' Opposition to Defendant's Petition for Permission to File Response and for Time to File upon:

CLERK OF THE SUPERIOR COURT
111 North Hill Street
Los Angeles, California 90012

TOBY L. PLEVIN, ESQ.
6380 Wilshire Blvd., Suite 1600
Los Angeles, California 90048

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, California 90272

MICHAEL J. FLYNN, ESQ.
FLYNN, SHERIDAN & TABB
One Boston Place, 26th Floor
Boston, Massachusetts 02108

JULIA DRAGOJEVIC, ESQ.
CONTOS & BUNCH
5855 Topanga Canyon Blvd., #400
Woodland Hills, California 91367

GERALD ARMSTRONG
6838 Charing Cross Road
Berkeley, California 94705

the addresses designated by said attorneys for that purpose, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Simone M. Leak
SIMONE LEAK

Sworn to before me
this 6th day of March, 1990

NOTARY PUBLIC

TERRY GROSS
Notary Public, State of New York
No. 31-4942893
Qualified in New York County
Commission Expires October 11, 1992

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR
Civ. No. B 038975
(Super. Ct. No. C420153

CHURCH OF SCIENTOLOGY OF CALIFORNIA
and MARY SUE HUBBARD,

Appellants,

-against-

GERALD ARMSTRONG

Defendant.

BENT CORYDON,

Appellee.

Appeal from Superior Court of California
County of Los Angeles
Judge Bruce R. Geernaert

DEFENDANT'S REPLY TO APPELLANTS' OPPOSITION TO PETITION FOR PERMISSION TO FILE RESPONSE AND FOR TIME

C.

I apologize for the thickness of this book, especially when appellants' opposition is but four pages. I am hoping that the complexity of this matter excuses to some extent my literary burden upon the court.

Forming the bulk of this reply is my declaration of March 15, 1990, which, although not prepared specifically to support this reply, provides many of the facts underlying the issues appellants have raised in their opposition and makes my position and why I am before this court in this manner understandable.

Turning to appellants' reasons why my petition should be denied:

1. It has become apparent to me that sealing the court file in this case has come to be an obstruction of justice. I believe I have a right to not obstruct justice. I do not agree that the sealing of the court file was essential to the settlement.

The validity of the settlement agreement is in question as shown in my March 15 declaration. Appellants have used the agreement to obstruct justice and to attempt to re-write history, including my own history. I therefore have a strong interest in the outcome of this appeal.

2. I did not fire Michael Flynn, my counsel of record in this case. It is my understanding that Mr. Flynn and all the lawyers in his law firm and all the lawyers involved in the litigation against the various Scientology organizations, hereinafter called "the organization," in the Contos & Bunch firm, which also represented me in the underlying case, are barred by agreement with the organization as part of the December 1986 settlement from further representation of anyone involved in litigation against the organization.

Since the settlement, moreover, each of these lawyers has expressed to me in some way an unwillingness to ever become involved again. Mr.

Flynn, the moving spirit in the pre-settlement litigation, has been emphatic on this point. The organization and its lawyers' attacks on Mr. Flynn are legendary; and each of the lawyers who represented me in the underlying case experienced the organization's abusive use of law and threatening conduct.

After the settlement I continued to communicate with lawyers from both Flynn, Sheridan & Tabb and Contos & Bunch as circumstances demanded. I consider all of these lawyers among my closest and most trusted friends, and I consider them my lawyers. But for Scientology-related matters they have not represented me since the settlement.

Legal representation was not an issue, however, until October 1989 when I again became intensely involved with the organization as my declaration shows. At that time both Mr. Flynn and I advised Larry Heller, a supervising organization attorney, that Mr. Flynn was not representing me and that I did not have a lawyer for organization matters (see paragraphs 4 and 5 of my declaration).

Over the next few months Flynn, Sheridan & Tabb and Contos & Bunch sent me the various post-settlement documents concerning me which they had received in their offices. On January 18, 1990 I received appellants' opening brief in their appeal No. B 025920 in Division Three. At that point I began to research my rights and responsibilities in that appeal. On January 30 I received appellants' reply brief and response to cross-appeal in this appeal before this court. I have also now received appellants' opening brief, but have not received Bent Corydon's respondent's brief, although I expect to receive it in the next few days.

On February 28 my petition for permission to file a respondent's brief was filed in the appeal in Division Three, and on March 1 my petition was filed in this appeal. The Division 3 Court granted my petition on March 9 and gave me 60 days from that date to file a response.

At this time I am unable to pay an attorney to help with my immediate organization-related legal matters: the Division Three appeal, this appeal, and an action to clarify the settlement terms. I have an attorney who represents me in other matters, who is already educated in my history and the facts and issues in the appeals and settlement, and who will help me if I can come up with a $20,000 retainer. I cannot imagine a presently uneducated lawyer doing the work for less so I have not wasted time looking for cheaper legal help. I cannot in any event at the present time afford that either. It is for this reason I am proceeding pro se. If I can raise an adequate retainer I will have an attorney of record in this appeal.

Regarding the document entitled "Response of Gerald Armstrong to Opposition Filed By Real Party in Interest, Bent Corydon," which was filed in this appeal on December 28, 1988, I had thought that whatever Mr. Flynn was going to file was going to be his statement of his position. He had asked me if I would file something for the organization and I had said no (see my declaration, paragraphs 40-42). I believe Mr. Flynn was acting to protect me and William Franks, another client of Mr. Flynn and participant in the settlement, since the organization had threatened to sue us at that time if we did not file a document supporting their position.

The preparation of legal documents, even to achieve the obviously un-lawyer-like product I have placed before this court, is not a simple nor quick task for me. And I have a full-time life in addition to document preparation. 60 days from the date of granting of my petition for the filing of a responsive document is a reasonable request.

3. The reasons I should be relieved from the restrictions of the settlement I have stated in my declaration: a. the organization has itself acted to invalidate the settlement agreement; b. the organization has used the agreement to obstruct justice and violate individuals' civil rights; and c. the restrictions are themselves against public policy.

The reasons I should be specifically excused from any waiver of my right to file a response in this appeal are: a. I was not aware of any such right at the time of the settlement; b. I have an interest in the outcome of this appeal; c. I have evidence which is relevant to this appeal; and c. I would be assisting this court and serving justice by responding.

CONCLUSION

Defendant's petition should be granted.

Respectfully submitted,

Gerald Armstrong
6838 Charing Cross Road
Berkeley, CA 94705
(415)849-0929

Dated: March 23, 1990

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6838 Charing Cross Road, Berkeley, CA 94705.

On March 24, 1990 I caused to be served the foregoing document described as DEFENDANT'S REPLY TO APPELLANTS' OPPOSITION TO PETITION FOR PERMISSION TO FILE RESPONSE AND FOR TIME TO FILE on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Oakland, California, addressed to the persons and addresses specified on the service list attached.

Executed on MARCH 24, 1990 at Oakland, California.

Bambi Sparks Phippeny

SERVICE LIST

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(213) 655-3183

Attorney for Plaintiff and
Cross Defendant

3-22-90

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BENT CORYDON, Plaintiff, vs. CHURCH OF SCIENTOLOGY INTERNATIONAL, INC., et Defendants	CASE NO. C 694401 NOTICE OF MOTION AND MOTION FOR AN ORDER DIRECTING NON-INTERFERENCE WITH WITNESSES AND DISQUALIFICATION OF COUNSEL; DECLARATIONS OF TOBY L. PLEVIN AND BENT CORYDON; REQUEST FOR SANCTIONS Date: April 3, 1990 Time: 9:00 a.m. Dept: 44
AND RELATED CROSS ACTIONS	

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT ON April 3, 1990, at 9:00 a.m. or as soon thereafter as counsel may be heard in Dept. 44 of the above entitled court, plaintiff will move this Court for an order, pursuant to C.C.P. 128(a)(5) enjoining you, your agents, servants, assignees and all those acting in concert with you from communicating with witnesses who have been subpoenaed by plaintiff for deposition or testimony in this action who are signatories to any settlement agreement, and/or release with you and/or from representing witnesses or paying attorneys to represent witnesses at such depositions. The same order shall be sought as to signatories to any such agreement or release who have not yet been subpoenaed.

This motion will be based on this notice of motion, the declarations of Gerald Armstrong, Toby L. Plevin, Bent Corydon, and the exhibits hereto and is made on the ground that such conduct threatens the integrity of these proceedings in a manner for which Corydon has no adequate recourse and that such an order authorized by C.C.P. 128(a)(5) under which this Court has the power

> "To control in furtherance of justice, the conduct of its ministerial officers and of all other persons in any manner connected with a judicial proceeding before it in every matter pertaining thereto."

Dated:____________

____
Toby L. Plevin, Attorney for Plaintiff.

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I. IT IS GROSSLY IMPROPER FOR DEFENSE COUNSEL TO REPRESENT DEPONENTS WHOSE TESTIMONY HE SOUGHT TO PREVENT TO PROTECT HIS OTHER CLIENTS. IN ADDITION TO AN IMPROPER APPEARANCE, THE CONDUCT, AS DESCRIBED BY GERALD ARMSTRONG, IS CRIMINAL INTERFERENCE WITH A WITNESS

On October 31, 1989, the Church of Scientology filed a Motion for Protective Order to prevent plaintiff Bent Corydon from deposing certain witnesses with highly relevant evidence. Prior to filing that motion, these defendants, through attorney Lawrence Heller, had threatened in writing to sue Corydon's counsel for attempting to serve the witnesses with deposition subpoenas. (See letter of November 3, 1989 from Lawrence E. Heller page 2, paragraph 3, attached hereto as Exhibit A). In another letter, he threatened to seek sanctions if the deposition of Gerald Armstrong were ever to go forward. (See letter of October 17, 1989 of Lawrence E. Heller attached hereto as Exhibit B, page 1, paragraph 4). In his opposition to the motion Corydon enumerated the several areas those witnesses were to testify about which are damaging to Scientology. The Court denied the motion and observed that the defendants could not make a contract to prevent percipient witnesses from testifying. (Plevin Declaration paragraph 2).

Heller (who had drafted the Motion for Protective Order)[1] and the Church of Scientology based the motion and the threats of retaliation upon their contractual arrangements with the prospective witnesses under which the witnesses (many of whom had previously given damaging testimony against Scientology) are required to keep silent about their knowledge of these defendants unless subpoenaed but which also requires them to avoid service of process.[2] Heller had also been a principal draftsman of those agreements (see Exhibit C) which contain liquidated damages clauses providing for substantial penalties in the event of breach. (See Armstrong Settlement Agreement, Exhibit D hereto, paragraph 7D, page 7).

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[1] See Heller Declaration, attached hereto as Exhibit C, which was attached to his Motion for Protective Order.

Given this background, it is undisputed both that the testimony of these witnesses has been sought because it is detrimental to defendants and also that defendants will go to great lengths to prevent that testimony. Accordingly, when the same attorney who had drafted the confidentiality agreements, and who had threatened to sue Corydon's attorney and who had so vociferously opposed these depositions, then appeared at the depositions as counsel for two of the witnesses who are subject to silencing agreements, Ron DeWolf and Howard E. Schomer, it became reasonable to question whether some effort is under way to prevent the witnesses from testifying fully and to prevent Corydon from obtaining evidence.[3]

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[2] A true copy of the agreement between Gerald Armstrong and a long list of Scientology organizations and individuals is attached hereto as Exhibit D. It has been authenticated by the Armstrong Declaration (Exhibit E hereto) and it states in pertinent part:

> "Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision..." (emphasis added).

Because of the voluminous nature of the exhibits to the Armstrong declaration, the exhibits are not attached herewith but have been separately filed in the record. The Armstrong Settlement Agreement is Exhibit R to his declaration.

It is anticipated that Heller and the defendants will contend that their sole purpose in approaching Mr. Schomer and Mr. DeWolf and offering to represent them without payment was to prevent discussion of the confidential settlement agreement which was subpoenaed. However, Armstrong states that the defendants (through Heller) wanted to prevent disclosure of much more than just the Settlement Agreement. In paragraph 7 of his declaration he states that Heller "had a problem with (his) responding to deposition questions concerning such things as Hubbard's misrepresentations or (his) period as Mr. Hubbard's archivist." These subjects are central to the proof of the defamation claims and Scientology's specific intent to interfere with publication of Corydon's book as well as other factual issues in this lawsuit.[4] Furthermore, given the bad faith exemplified by the objections interposed by Heller (that will be further described infra), that position is simply not credible.

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[3] In fact, since Mr. Schomer, one of the witnesses, testified that he was not paying for Heller's services and that he assumed the defendants herein were paying, the obvious question that the testimony has been tainted must be given even further weight. (See Excerpts from Schomer Deposition, attached hereto as Exhibit F, at pages marked 24, line 22 to 24.) Ron DeWolf, the son of L. Ron Hubbard, was recently deposed in this case in Carson City, Nevada. Heller represented DeWolf. The same reasons for which Heller's representation of Schomer is improper, so is his representation of Ron DeWolf. DeWolf's settlement with the Church occurred approximately six months before the group settlement of 1986 but is believed to contain the same proscriptions. Plaintiff asks this Court herewith for leave to re-depose DeWolf and to be compensated by Heller for all the costs and fees associated with the original deposition.

[4] In addition, Corydon's attorney stated in oral argument on the Motion for Protective Order that the sole purpose for subpoenaing the agreements was to discover whether they contained any terms which might indicate a concealment of

Under these circumstances, plaintiff's counsel extensively questioned Schomer at his deposition regarding the circumstances of his retaining Heller. In response, Mr. Schomer denied that he was threatened with a lawsuit for breach of contract if he testified. However, he also testified that he agreed to let Heller represent him because he was "concerned" that he would be sued if he violated the settlement agreement which required him "not to discuss things about the Church (of Scientology)". Schomer Excerpts, Exhibit F page 43, line 12 through page 44, line 12. He also testified that Heller told him that if he testified, Heller would consider it a breach of contract. (Exhibit F, page 73, lines 21-23).[5] Thus, even assuming arguendo

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evidence or obstruction of justice. Other terms such as the amount of the settlement or other usual settlement terms could be deleted. If Heller's concern was truly only to prevent inquiry into the valid terms of the settlement agreement that could have been done by agreement without his representing Schomer and without a motion for protective order.

[5] In spite of Schomer's denial of overt threats, these responses demonstrate not only that his entire testimony is being given under fear of a lawsuit but also that it is subject to the advice of the attorney who drafted that agreement to protect other Scientology clients. This suggests that the entire testimony is tainted. This concern is made the more tangible by the fact that Schomer had previously testified at a trial against Scientology that he was afraid for his life after escaping from Scientology (he had been under guard for three weeks) but now can't recall that testimony. See Schomer Excerpts, Exhibit I, page 3856 to page 3860 and further discussion, infra. Schomer also stated that Heller had not informed him that he represents Author Service Inc. in this lawsuit (the specific Scientology entity that Schomer had previously worked for). Accordingly, thereafter, when, after prompting by Heller, Schomer said that any possible conflicts had been waived, that answer must be viewed with suspicion (Exhibit F, page 78, line 14 - page 79, line 25).

that the only prior communication between Mr. Heller and the witnesses Schomer and DeWolf included some references to the witnesses' concern that they not violate the silencing provisions of the settlement agreement, nevertheless, such representation raises concern about the integrity of the deposition and the propriety of Heller's conduct. But that is not all there is: The declaration of Gerald Armstrong demonstrates that the communication with the witnesses may involve more than merely an improper appearance. At least as to Armstrong, the direct threats were communicated and an express intent to obstruct discovery was stated.

The Declaration of Gerald Armstrong dated March 15, 1990, Exhibit E hereto, states that Mr. Heller called Armstrong after he had been subpoenaed and asked whether he would be represented by counsel for the deposition. When told no, Mr. Heller then offered to have his client pay for Armstrong's attorney provided that:

> "the attorney would do what [Heller's] client wanted. He said that to maintain the settlement agreement... [Armstrong] should refuse to answer the deposition questions and force Mr. Corydon to get an order from the court compelling [Armstrong] to answer." (Exhibit E, paragraph 4).

At paragraph 7 Armstrong relates this threat from Heller in another conversation:

> "He said I had a contractual obligation and the organization [Scientology] which it had paid a lot of money for, not to divulge confidential information and that if I answered I would have breached the settlement and may get sued."

At paragraph 44 Armstrong states that on a third occasion Heller asked him to provide an untruthful declaration to help prevent his deposition from going forward. When Armstrong refused Heller again alluded to the contractual obligation not to testify.

While these assertions are extraordinary, they can not be dismissed in light of (1) Heller's written threats to Corydon's attorney, (2) the entire history of "fair game" against enemies of Scientology,[6] (3) Schomer's admitted fear, and (4) the entire purpose of the Settlement Agreements (as more fully described infra). Furthermore, they are consistent with Armstrong's prior experience with Scientology and its attorneys.

For example, at paragraph 40 Armstrong relates that his prior refusal to cooperate with a Church request following the settlement led to threats by Church attorneys to disclose embarrassing personal information. And, at paragraph 43 he states that in November 1989, after receiving the deposition subpoena in this case, he received a video tape of himself in the mail that had been introduced into evidence against him previously by the Church of Scientology. It came together with the business card of the private investigator who had done the videotaping. It is hard to imagine a more chilling scenario than to receive that sort of "We're watching you" threat in the mail.

Denounced as an enemy of Scientology in 1982 by their publication declaring him a "suppressive person", Mr. Armstrong was a victim of intense fair game activity up until his settlement with Scientology in December of 1989. His breaking silence now demonstrates remarkable courage. If neither DeWolf nor Schomer is capable of such courage, that means they are only human. However, this Court does not have to sit back and ignore the threats to the truth-finding process that are inherent in fair game policy.

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[6] The fair game policy was recently described in Wollersheim v. Church of Scientology of California (1989) 212 Cal.App3d 372 in which the Second District Court of Appeal stated, "As described in the evidence at this trial the fair game policy neutralized the heretic by stripping [(a) person] of his or her economic, political, and psychological power." Id.

Heller put the planned obstruction of discovery as described to Armstrong into effect at the March 7 Schomer deposition where he instructed Schomer not to answer certain key questions in order to force Corydon to file motions to compel regarding clearly relevant testimony on central issues in this case. For example, Heller refused to let Schomer answer questions regarding his knowledge of Scientology's general use of the fair game policy (that an enemy of Scientology may by "tricked, sued, lied to or destroyed") even though the allegations of fair game are central to the complaint.[7] (See Schomer Deposition Excerpts, Exhibit F, page 132 line 14 to page 134 line 18). Since Heller and the defendants in this lawsuit persist in denying the existence of the fair game policy,[8] plaintiff must have the freedom to broadly inquire into that area and an experienced attorney like Heller can not reasonably contend otherwise. Thus, this series of instructions not to answer questions is indicative of the defendants' intent to obstruct reasonable discovery.

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[7] The fair game policy, attached hereto as Exhibit G, was previously authenticated in this lawsuit by Vicki Aznaran, the ex-President of defendant Religious Technology Center. The fair game policy forms the core of the emotional distress claim and is relevant to issues in all other causes of action. It is also relevant to disprove allegations in the cross-complaint regarding Corydon's motivations to sever ties with Scientology.

[8] In recent trial testimony in Religious Technology Center v. Yanny, LASC Case No. 690 211, Scientology counsel and executives contended that the fair game policy was cancelled in 1969. See Exhibit H hereto, and excerpt of testimony given on January 23, 1990 by Warren Mc Shane an Religious Technology Center official. This was a persistent theme throughout that trial in which Heller was one of the attorneys for the Church of Scientology.

But Heller's bad faith interference with legitimate discovery did not stop there. Again objecting on the ground of relevance, he also refused to let Schomer answer questions relating to David Miscavige, a defendant in this case, particularly as to his history of violence against Schomer who has previously testified about certain inhuman treatment at Miscavige's hands. (See instructions not to answer at Exhibit F, pages 168-175 and Exhibit I, an excerpt from Schomer's testimony in Christofferson vs. Church of Scientology, at pages marked 3632-3639). Miscavige is accused in this action of ordering physical attacks on Corydon and directing a campaign of fair game against him. Thus evidence of that type of conduct is extremely relevant to this lawsuit.

While the instructions not to answer were the obvious method by which defendants, through their attorney, have improperly interfered with legitimate discovery, the Schomer deposition also made it clear that, at the very least, he was not being fully candid in the responses he did give. For example, in 1985 Schomer testified that, when he gave previous testimony against Scientology, and when he escaped from Scientology, he was afraid for his life. (See Exhibit I, at pages marked 3637 and 3856-3860). Yet when asked to recall that testimony and comment on it in the deposition in this case he did not recall having so testified or why he felt that fear! (See Exhibit F pages 62-64). Similarly, in his prior testimony, Schomer extensively discussed his pain at the fact that, pursuant to Scientology policy, his daughter had been forced to "disconnect" from him after he left the organization (See Exhibit I, pages 3804-3806). But during this deposition he denied that his daughter had ever disconnected from him. (See Exhibit F, page 148).

Corydon asks the Court to observe the obvious: that Heller's instructions on the ground of relevance can not be the reasonable result of a bona fide difference of opinion but rather demonstrate his and his clients' deliberate plan to sabotage Corydon's deposition efforts and to force Corydon to make motions to compel and to obstruct discovery against the defendants. Corydon hopes that this Court will not sit by while parties and attorneys who have announced their intent to prevent relevant discovery succeed in those efforts at obstruction and undertake actions inconsistent with truth-finding process. Nor can Corydon sit by and watch while witnesses crucial to his case are being swayed and convinced that they can not freely speak because of fear that they will violate the terms of a settlement agreement that is in violation of law and public policy. This Court has the inherent power to control the conduct of the attorneys and parties in this action and can exercise such power to prevent the continuation of this perversion of discovery.

II. CONTRARY TO DEFENDANTS' ASSERTIONS, THE SETTLEMENT AGREEMENTS ARE NOT LEGAL AND HAVE NOT BEEN APPROVED BY THE COURTS.

In the summer of 1986, Scientology began negotiations to settle a large number of lawsuits in which the plaintiffs were all represented by Boston attorney Michael Flynn. (Declaration of Heller, Exhibit C hereto). As evidenced by both the Armstrong

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Agreement, Exhibit D hereto, and the Bill Franks Agreement, (see Exhibit J previously authenticated in this action by Heller), Scientology demanded that the settlements preclude the settling plaintiffs from cooperating voluntarily with any parties adverse to Scientology but furthermore that they avoid service of subpoenas.[9] In all instances they also required that the several courts in which the cases were pending approve the sealing of the court files of the subject lawsuits as a condition of the settlements. This was stated in the Transcript of Proceedings of December 11, 1986, in the Armstrong case at which some of the settlement terms were presented to Judge Paul Breckenridge. At that time Church attorney Michael Hertzberg stated that sealing was required by Scientology in all the Flynn settlements. (Exhibit K, page 6 lines 17-28).

The settling plaintiffs included all of the known high-ranking Scientologists who had left Scientology and who had specific, first-hand knowledge of Scientology's frauds, criminal acts and fair game activities. With these knowledgeable plaintiffs silenced, any plaintiff who did not settle and future litigants against the Church would be severely disabled from proving their cases since the key evidence on which they needed to rely, specifically, the knowledge held in the memories and mouths of such silenced witnesses, was in effect secreted and concealed or destroyed.

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[9] The text of the relevant clause from the Armstrong Agreement is quoted above in footnote 2. The past testimony of those settling parties (hereinafter the "SIGNATORIES") had included extensive evidence regarding the fair game policy, Scientology's fraudulent recruitment tactics, Scientology's misrepresentations regarding L. Ron Hubbard, the founder of Scientology. Their testimony also included extensive evidence about Scientology's "criminal activities" including the blackmailing of judges and other felonies and the use of parishioners' confessional files to devise fair game strategies against deserters and for use in litigation against them. (Plevin Declaration paragraph 6).

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In December of 1986, the Settlement Agreements were finalized. The Settlement Agreement entered between Scientology and Gerald Armstrong (Exhibit D hereto) contains secrecy clauses in paragraph 7(D) at pages 6-8 and paragraph 7(G) on page 10. At pages 7(H) at pages 10-11 the agreement also requires that Armstrong avoid service of process and is quoted in footnote 2 above. Heller's statements on March 7, 1990 confirmed that Schomer's agreement contains similar language. (Exhibit F, page 50, lines 9-25).

It is anticipated that defendants will assert, as they have repeatedly done, that the agreements in issue have been approved by all the courts in which the settled cases were venued. This is not true. Most recently this was asserted by three of the defendants during the trial of Religious Technology Center et al v. Yanny, LASC Case No. C 690 211, in an effort to prevent Armstrong's testimony in that trial.[10] Attached to their written objection to his testimony were several identical documents captioned "Order Dismissing Action with Prejudice". These recite that the Settlement Agreement for each of the settled cases had been filed in the appropriate court file. (See Exhibit L hereto, Objection to Testimony of Gerald Armstrong at page 4-5 and

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[10] Judge Cardenas did not permit Armstrong to testify but his reasoning was not the result of the settlement agreements but rather because the offer of proof regarding Armstrong's testimony indicated, that in Judge Cardenas' view, such testimony should be excluded under Ev. Code section 352.

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Exhibit H to that Objection). These Orders had apparently been presented as stipulated orders to the respective courts. Thus, defendants contend that the Settlement Agreements were in fact reviewed and approved by each of the courts involved. However, Corydon has discovered evidence proving that the Settlement Agreement was never seen in at least one instance where the Order Dismissing Action was signed by the trial court. And, in another instance, where the court allegedly has enforced the agreement, the agreement in issue was a modified one and it does not contain the clause regarding avoidance of service.

Specifically, the same Order Dismissing Action was part of the sealed Armstrong file in the case captioned Church of Scientology of California vs Armstrong, LASC Case No. 420 153, which counsel for Corydon saw when Corydon was successful in his motion to unseal that file. See Exhibit M hereto. However, in spite of the language of the order, it was neither in the file nor listed in the Register of Actions. Indeed, when subsequently challenged by Corydon on this point Scientology counsel admitted that the settlement agreement had not been filed. (See Exhibit N hereto, page 3, lines 18-27). Accordingly, the defendants' offer of proof that the subject agreements have been approved and/or filed by other courts is highly suspect and can not be confirmed as long as those other files remain sealed. In fact, the only other settlement document that has surfaced disproves Scientology's contention in the Objection to Armstrong Testimony that the same agreement was approved in a Florida federal court in four cases pending in that court. Specifically, Corydon's attorney, Toby L. Plevin, was asked by Margery Wakefield, one of the signatories to

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those agreements, to review the agreement and the transcript of the hearing in which the court considered all four settlements. Unlike the Armstrong and Franks Agreements, the agreement signed by Wakefield and approved by the Florida court does not contain the provision requiring that individuals avoid service of process. Accordingly, there is no evidence that any court has approved the language which Corydon contends is illegal. As the Wakefield settlement agreement referred to is under seal, unfortunately, it can not be attached hereto.[11] (See Plevin Declaration at paragraph 7).

In view of the foregoing, this Court can not and should not consider defendants' anticipated protestation that the agreements have been approved by other courts. That contention appears to depend on sleight of hand.

III. THE ONLY REMEDY FOR SUCH IMPROPER CONDUCT IS TO DISQUALIFY COUNSEL AND TO RESTRAIN DEFENDANTS' AND COUNSELS' CONTINUING MISCONDUCT.

Scientology has sought to suppress the evidence of subpoenaed witnesses not only by motion but also by express threats of lawsuits against one of the witnesses and against counsel for plaintiff for merely subpoenaing these persons. As to another witness, the threat was, at the very least, an implied one. While it is conceivable that Heller's subsequent representation of deponents at the same depositions he sought to prevent may be consistent with a waiver of the conflict between his clients and the deponents, nevertheless, in light of the foregoing efforts at suppression, it is simply not conceivable that there is no tacit agreement or intent in such waiver to continue to suppress evidence. While a future motion to compel may cure the suppression caused by a deliberate scheme to make improper objections on relevance grounds, no such motion can cure the likely lack of candor, or indeed, the misrepresentation that may be the result of the representation of these witnesses by their former adversary because they fear Scientology will sue them if they testify. Accordingly, Heller must be removed as counsel before the continuation of the Schomer deposition and be removed as well from continued representation of DeWolf.

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[11] While Plevin is constrained by the seal not to produce it or discuss its terms, the foregoing statement about what is not contained in the agreement is necessary to prevent defendants from misleading this Court as they apparently misled Judge Cardenas when submitting the objection to Mr. Armstrong's testimony wherein they represented that these settlements had been universally approved.

For this Court to countenance the representation of a witness by the attorney who sought to suppress his evidence pursuant to a contract the attorney drafted that was designed to prevent testimony adverse to his clients and who has threatened another witness with a lawsuit would be to sanction their complete disrespect for the truth-finding process and for the canons of ethics.[12]

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[12] It is also inconsistent with an attorney's professional duties which include the mandate at Business and Professions Code, section 6068(d) the duty "to employ, for the purpose of maintaining the causes confided to him such means only as are consistent with truth". And, of course, the Rules of Professional Ethics prohibit the suppression of evidence. Furthermore, Corydon believes that the actions of Heller and the defendants herein are felony violations of one or more provisions of the Penal Code dealing with attempts to influence witnesses and/or to persuade them not to testify. See Penal Code sections 136 et seq.

Accordingly, plaintiff seeks an order as follows:

(1) that no defendant herein, their attorneys, agents, employees or associates, communicate with any witness that has been subpoenaed or who in the future is subpoenaed by plaintiff who has entered into any settlement agreement or mutual release with or for the benefit of any defendant herein;

(2) that no attorney for any defendant herein represent any deponents subpoenaed by plaintiff in connection with any depositions herein;

(3) that no defendant herein, or their attorneys, agents, employees or associates pay or offer to pay for attorneys to represent any deponent in this lawsuit subpoenaed by plaintiff or suggest to deponents the names of any attorneys;

(4) that defendants, each of whom are beneficiaries of the settlement agreements which are the subject of discussion herein, prepare a statement that plaintiff can include with deposition subpoenas to ex-Scientologists in the future containing the following language:

"TO ALL PERSONS WHO HAVE SIGNED SETTLEMENT AGREEMENTS WITH CONFIDENTIALITY CLAUSES WITH ANY AND ALL SCIENTOLOGY ENTITIES:

> PLEASE NOTE, BY ORDER OF LOS ANGELES SUPERIOR COURT, THE UNDERSIGNED HEREBY ADVISES YOU THAT YOU CAN NOT BE SUED FOR BREACH OF CONTRACT FOR TESTIFYING FULLY AND CANDIDLY AT SUCH DEPOSITIONS." Religious Technology Center, Church of Scientology International, Church of Scientology of California, Author Services Inc, Bridge Publications Inc, Scientology Missions International;

(5) that attorney Heller be disqualified from representing Mr. Schomer and Mr. DeWolf and that he advise Mr. Schomer to confer directly with Ms. Plevin regarding the continuation of his deposition or retain other counsel in that connection;

(6) that the commission for the deposition of Ron DeWolf be re-issued by this Court so that he may be deposed again without the presence of Mr. Heller as counsel;

(7) that because the conduct complained of herein demonstrates such complete bad faith without colorable reason, defendants be ordered to pay sanctions of $4,899. 75 per the Declaration of Toby L. Plevin paragraph 8.

Date:___________

Toby L. Plevin, Attorney
for Plaintiff

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DECLARATION OF TOBY L. PLEVIN

I, Toby L. Plevin, declare as follows:

1. I am counsel of record for Bent Corydon in the within proceeding.

2. There is no Transcript of Proceedings of the hearing at which this Court considered defendants' motion for a protective order. However to the best of my recollection, when ruling on defendants' motion the Court stated that they could not prevent percipient witnesses from testifying.

3. Submitted herewith as Exhibits A and B are true copies of letters I received from Lawrence Heller dated November 3, 1989 and October 17, 1989, respectively.

4. Lawrence E. Heller has appeared as counsel for deponents in this matter, Ronald DeWolf and Howard E. (Homer) Schomer on February 19 and March 7, respectively.

5. Attached as Exhibit I is a true copy of excerpts from testimony given by Schomer in another lawsuit. The entirety of his testimony is being lodged separately with the Court. 6.I have read many pages of testimony in several lawsuits and many declarations by signatories against Scientology. These people were called to testify against Scientology and testified at length about fraud, violence, other criminal activities of Scientology, the abuse of confidences and many other things damaging to Scientology.

7. I have reviewed the Settlement Agreement of Margery Wakefield which was one of four reviewed and approved at the same time in a Florida federal court. Unlike the Armstrong and Franks agreements, that agreement does not contain the provision

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requiring that individuals avoid service of process. Accordingly, there is no evidence that any court has approved the language which Corydon contends is illegal. As the Wakefield settlement agreement referred to in this is under seal, unfortunately it can not be attached hereto.

8. I am cognizant of this Court's admonition to counsel in this case not to request sanctions as a matter of routine. However, the conduct which has forced plaintiff's counsel to prepare this motion is egregious and can have no pretext of being consistent with the ethical duties attorneys are sworn to uphold. Accordingly, I request sanctions to reimburse plaintiff for the substantial expenditures involved in the DeWolf and Schomer depositions because the misconduct described herein has rendered those efforts wasteful. Plaintiff seeks sanctions under C.C.P. section 128.5, separate and apart from remedies that may be available pursuant to motions to compel, in the amount of $4,899.75 as follows: (a) the court reporter fees for the DeWolf deposition $656.00; (b) the court reporter fees for the first day of the Schomer deposition, $1,143.75; (3) attorney fees for both depositions (12 hrs times $175.00), totalling $2,100.00; (4) attorney travel time and travel expenses to Carson City Nevada, $900.00.

Sworn under penalty of perjury under the laws of the State of California this ____ day of March, 1990.

Toby L. Plevin, Attorney for
Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS

I an a resident of the county of Los Angeles; I an over the age of eighteen years and am not a party to the within entitled action; my business address is 6380 Wilshire Blvd. Suite 1600, Los Angeles Ca. 90048.

On MARC 19, 1990 I served the following documents described as: Notice of Motion & Mot for Order Directing Non-Interference

on interested parties in this action by placing a true copy thereof in sealed envelop(s) addressed as follows:

William Drescher
Wyman Bautzer et al
2049 Century Park East 14th Fl
Los Angeles, CA 90067

Lawrence F. Heller
Turner Gerstenfeld et al
8383 Wilshire Blvd. Suite 510
Beverly Hills, Ca. 90211

Kendrick Moxon
Bowles and Moxon
6255 Sunset Blvd. Suite 2000
Hollywood, Ca. 90028

Michael Hertzberg
740 Broadway - 5th Floor
New York, New York 10003
(FED EX)

________BY MAIL

I am fully familiar with my office's mail collection and preparation practices and procedures and I deposited said envelop(s) in accordance with my office's mail pick-up procedure for delivery on the same day to the U.S. mail with first class postage.

________BY FACSIMILE TRANSMISSION

I caused said envelops to be transmitted by facsimile to the persons and offices listed above.

___X___BY PERSONAL SERVICE

I caused said envelops to be delivered by hand to the persons and offices listed above.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed at Los Angeles, California on March 19, 1990.

Toby L. Plevin

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ORIGINAL FILED
MAR 27 1990
COUNTY CLERK

3-30-90

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BENT CORYDON,

Plaintiff,

vs.

CHURCH OF SCIENTOLOGY
INTERNATIONAL, et al.,

Defendants.

AND RELATED CROSS-ACTIONS

Case No. C 694 401

OPPOSITION OF DEFENDANTS TO MOTION FOR ORDER DIRECTING NON-INTERFERENCE WITH WITNESSES AND DISQUALIFICATION OF COUNSEL; DECLARATIONS OF RONALD DeWOLF, HOWARD D. SCHOMER, MICHAEL LEE HERTZBERG, KENNETH LONG AND LAWRENCE E. HELLER; REQUEST FOR SANCTIONS AGAINST PLAINTIFF AND HIS ATTORNEY AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

DATE: April 3, 1990
TIME: 9:00 a.m.
DEPT: 44
TRIAL DATE: None Set

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I. PLAINTII AND HIS COUNSEL, TOBY PLE N, ARE WELL AWARE OF THE FACT THAT MESSRS. DeWOLF AND SCHOMER CHOSE LAWRENCE HELLER AS THEIR ATTORNEY AND THEREAFTER FREELY AND VOLUNTARILY GAVE DEPOSITION TESTIMONY

Apparently dissatisfied with the responses they elicited at the depositions of Ronald E. DeWolf and Howard D. Schomer,[1] plaintiff and his counsel now seek the rather extraordinary remedy of re-deposing these subpenaed witnesses, this time without the benefit of counsel of their choice. Attorney Plevin received substantive responses to virtually all of the questions she posed to these two deponents. (See Section II below.) Least there be any doubt as to what precipitated the initial Motions for Protective Order filed by these defendants, and what percipitated Schomer contacting Heller to represent him, it was the subpena duces tecum served upon parties settling with Scientology which requested nothing but those settlement documents.

The gravamen of plaintiff's Motion is that the deposition testimony of Schomer and DeWolf is "tainted". Plaintiff in essence accuses DeWolf and Schomer of giving perjured testimony as a result of their fear that they would be sued if they gave testimony unfavorable to the defendants.

In response to that unsupported contention, this Court is directed to the attached Declarations of Howard D. Schomer and Ronald E. DeWolf. In no uncertain terms, DeWolf and Schomer testify in their attached declarations that: (1) they contacted attorney Lawrence E. Heller after they were served with their deposition subpenas by the plaintiff, not visa versa, (2) they requested Mr.

Heller represent them at their respective depositions, (3) at no time did they believe that their Settlement Agreements prevented them from testifying in response to any questions whatsoever posed to them by attorney Plevin at their depositions, and (4) they were never intimidated or threatened with litigation, or any threats whatsoever, at any time either prior to or subsequent to their depositions. (Indeed, they testify in their attached declarations and in their depositions that they never even discussed litigation against Scientology with Mr. Heller or anyone else).

Perhaps most importantly, Ms. Plevin was well aware of the foregoing at the time she filed the instant Motion in that she had extensively questioned each of the deponents, most particularly Mr. Schomer, on these precise areas:

1. Deponents Schomer and De Wolf initially contacted attorney Heller subsequent to their service of the deposition subpenas. Heller did not contact them.

> "Q. When was the first time you received a contact from any person regarding the deposition after you were subpenaed"
> A. Never.
> Q. No one has ever telephoned you regarding this deposition?
> A. No, That I can recall, no.
> Q. No one has ever called you --
> A. Except yourself.
> Q. Isn't it true that Mr. Heller called you and asked you for a declaration?
> A. No.
> Q. Isn't it true that you gave Mr. Heller a declaration regarding this deposition going forward?
> A. True.
> Q. How did that occur?
> A. I called Mr. Heller."
> (Schomer deposition pg. 11, ln. 13 to pg. 12, ln. 4. All excerpts of Schomer's deposition quoted herein are attached hereto collectively as Exhibit "B".)
>
> * * *
>
> "A. I eventually called him and told him that I was subpenaed. The reason I called him is because I had talked to him once before concerning another matter and I may have asked him his advice. I am not sure exactly what I had -- you know."

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(Schomer deposition pg. 13, ln. 7 to 8.)

2. Schomer and DeWolf asked Mr. Heller to represent them, not visa versa.

> "Q. And did he tell you at that meeting or in any prior conversation that prior to your retaining him as counsel that you should permit him to represent you?
> (Schomer deposition, pg. 26, ln. 25 to pg. 27, ln. 2.)
> (Colloguy between counsel follow)
> THE DEPONENT: We had talked about it on the phone that possibility of where I mentioned I didn't have any counsel and is it a possibility of him representing me or someone else representing me.
> (Schomer deposition pg. 27, ln. 25 to pg. 28, ln. 3.)
>
> * * *
>
> "Q. BY MS. PLEVIN: You wanted to give (sic) help and advice to the church?
> A. No, that I wanted them to give me help and advice.
> Q. Regarding --
> A. Let me rephrase that: Not from the church, from Mr. Heller. It just so happens Mr. Heller was also representing your client. He was actually not your client but one of his clients is part of the church.
> Q. And you wanted his help and advise regarding what?
> A. This deposition.[2]
> (Schomer deposition, pg.42, ln. 23 to pg. 43, ln. 9.)

The right to be represented by counsel of one's choice in civil litigation is fundamental. The refusal to recognize or allow appearance or representation by such counsel is a denial of due process and therefore an act in excess of jurisdiction. Mendoza v. Small Claims Court, (1958) 49 C.2d 668, 673, 321 P.2d 9; Evans v. Superior Court, (1939) 14 C.2d 581, 96 P.2d 107. Plaintiff's attempt, through this Motion, to deprive Schomer and DeWolf of counsel of their choice is unconstitutional, beyond this Court's jurisdiction and unsupported by any interpretation of the facts. Ms. Plevin's request that these deponents be deprived of counsel of their choice is in bad faith.

3. The deponents testified that their understanding of their Settlement Agreements was that they could respond to all questions posed to them pursuant to the subpena served upon them.

> "Q. BY MS. PLEVIN: Was it your understanding of the settlement agreement that you were not supposed to give answers at a deposition unless the church approved it?
> A. No.
> Q. Is your understanding that you could answer questions as you felt were honest and truthful?
> A. Yes.
> Q. And do you feel that you could do so upon being served with a deposition subpena without fear from the church or fear about the church?
> (Schomer deposition, pg. 44, ln. 13 to ln. 22.)
> (attorney colloguy follows)
> A. If it was just a deposition that you are required to attend a deposition meaning me required to attend a deposition and give any information that I knew about Bent Corydon, I wouldn't have called Mr. Heller.
> (Schomer deposition, pg. 45, ln. 17-20.)

* * *

> THE DEPONENT: First of all, I haven't read or seen my settlement agreement in many years. I do not have a copy anymore. The only thing I can remember concerning if it had any vague connection with what you just read was that I would be -- could make myself not available for service as I recall, and that if I was served I was compelled to comply. And that's all I remember.
> (Schomer deposition, page 55, lines 3 - 16.)

4. Neither deponent was intimidated through threats of litigation by Scientology or any other threats whatsoever. Litigation with Scientology was not even discussed.

> Q. Provide what information if you had it?
> A. Any information concerning my settlement. But there was no coercion or threats as you mentioned before and my answer to your original question was going to be bullshit because, you know, he never had and never has threatened me in any way, shape, or form even when the situation with the possibility of me seeing Mr. Yanny or taking to Mr. Yanny came up.
> MR. HELLER: "He" being me.
> THE DEPONENT: Right, being Mr. Heller.
> Q. BY MS. PLEVIN: So your only concern about the relevance of your testimony to this deposition arises because of your concern that we requested that you produce the settlement agreement; is that right?
> A. That's correct.
> Q. You have no concern whatsoever about testifying fully and truthfully about ASI; is that right?

A. No. I have in the past and it's in all sorts of records that are public.
Q. And about your experiences in Scientology?
A. That's correct.
(Schomer deposition, pg. 49, ln. 1-25.)

* * *

BY MR. HELLER: Has anyone ever contacted you from the Church of Scientology, its representatives, or otherwise that you know of since the settlement agreement other than me?
A. No.
Q. We have talked on the phone how many times prior to our meeting yesterday to your recollection?
A. Three.
Q. The earliest of which was when?
A. Whenever the question of whether I was seen with Mr. Yanny or not came up.
Q. Did I ever threaten to sue you?
A. Never.
Q. Did I ever indicate that my client or I was considering suing you?
A. No.
Q. Did I ever indicate to you what your testimony should be in this litigation or this deposition?
A. Never.
Q. Did I ever tell you not to show up and honor the subpena and answer relevant questions?
A. Never.
(Schomer deposition, pg. 72, ln.8 to pg. 73, ln. 4.)[3]

There is no doubt that Ms. Plevin was well aware of the fact that the testimony of these two deponents was voluntarily and freely given without any threats or intimidation. Ms. Plevin's present Motion is a desperate, bad faith attempt to vitiate past deposition testimony and have those depositions retaken because she was dissatisfied with the truthful responses initially given by these deponents. Worse, it would appear Ms. Plevin, knowing her Motion is doomed to failure, filed it in an attempt to negatively taint defendants and their counsel. An example of the bad faith inherent in plaintiff's Motion is Plevin's statement on, page 4 of that Motion, that on page 73 of Schomer's deposition, Schomer testified that "Heller told him that if he testified Heller would consider it a breach of contract." However, Schomer testifies to quite the opposite on page 73 of his deposition:

> "Q. Did he (Heller) ever tell you that if you answer questions about Scientology or any of the beneficiaries of that agreement deemed not to be relevant that that would be a breach of your agreement?
> A. Never."
> (Pg. 73, lns. 9-13 of Schomer deposition.)

II. THE FEW QUESTIONS THAT MR. SCHOMER WAS INSTRUCTED NOT TO ANSWER WERE CLEARLY NOT RELEVANT TO THE ISSUES IN THIS LITIGATION. REGARDLESS, PLAINTIFF'S REMEDY IN THAT RESPECT LIES WITH A MOTION TO COMPEL AND NOT THE PRESENT MOTION

Plaintiff contends that Schomer, at his deposition, was instructed "not to answer certain key questions in order to force plaintiff to file motions (sic) to compel regarding clearly relevant testimony on central issues on this case" (Motion, pg. 7, ln. 9-11). Out of a full day of deposition testimony of Mr. Schomer, Ms. Plevin references a mere two (2) questions which Schomer was instructed not to answer.[4]

One of those questions, according to Ms. Plevin, "regard(ed) (Schomer's) knowledge of Scientology's general use of fair game policy." (Motion, pg. 7.) Plaintiff thereafter references that question in Schomer's deposition on page 132, line 14 to page 134, line 18. A review of those deposition pages indicates that the question Schomer refused to respond to had nothing to do with Scientology's use of fair game policy at all. The question asked was:

> "Q. Did you observe at least on one occasion that there was an order from ASI calling for PC files to be culled on certain people?"

In that here is no allegation in aintiff's complaint that any of the defendants are in possession of, no less have attempted to disclose, confidential files of this plaintiff, an instruction to Schomer not to answer that question was interposed. Nevertheless, plaintiff could well have asked, and was invited to ask, whether deponent Schomer was aware of any orders or facts surrounding disclosure, or even review, of plaintiff's "PC" or confidential files. Ms. Plevin did, indeed, at another point in that deposition ask Mr. Schomer whether "fair game" had ever been applied to him or, to his knowledge, to plaintiff and Mr. Schomer responded in the negative.

The only other questions referenced in plaintiff's Motion that Schomer was instructed not to answer related to Schomer's experiences within Scientology, which experiences transpired at a point in time well after the plaintiff had left Scientology. It cannot be disputed that those questions have nothing to do with the issues in this case.

Regardless, whether Schomer was correctly instructed not to answer those two questions is properly the subject of a motion to compel, not the present Motion. Under any circumstance or interpretation of the law, it is inconceivable that an instruction not to answer two (2) questions during the course of two full day depositions constitute grounds for ignoring the entirety of those depositions and asking that they be retaken.

Mr. Heller's representation of Schomer and DeWolf in no fashion obstructed or inhibited either deposition. That fact, as well as Plevin's lack of any basis for her Motion, proves the present Motion was filed for improper purposes and in bad faith.

///

III. ALTHOUGH IN NO WAY RELEVANT TO THE INSTANT MOTION, THE SETTLEMENT AGREEMENT WHICH ARMSTRONG ENTERED INTO IS LEGAL AND ENFORCEABLE

Plaintiff attempts, through his motion, to collaterally attack the validity of certain settlement agreements between Scientology and various litigants which transpired some three years ago. One of those settlement agreements was entered into by Gerald Armstrong. Plaintiff's reference to those settlement agreements are not only improper but are irrelevant to any issue in the instant Motion or, for that matter, in this case.

As has been previously demonstrated by both deposition testimony quoted in Section I hereinabove and the attached Declarations of Messrs. Schomer and DeWolf, neither of these parties any longer have possession of nor recall the substance of the settlement agreements that they entered into with certain Scientology and unrelated entities. Indeed, both Schomer and DeWolf have testified in their depositions, as well as in the attached declarations, that even given the faint recollections they have of those settlement agreements, they did not recall that the settlement agreements prohibit them from either being served with a subpena or voluntarily and freely testifying. In fact, both Schomer and DeWolf have testified at their respective subpenaed depositions and have answered any and all questions posed to them that were even remotely relevant to this litigation.

Furthermore, one thing that is imminently clear from the declaration of Gerald Armstrong attached to plaintiff's moving papers is that he also will be freely and voluntarily testifying as a subpenaed witness at his deposition.[5]

Regardless, the settlement agreements at issue have been approved by various courts. Indeed, the Los Angeles Superior Court, in a case wherein this very plaintiff, BENT CORYDON, is a party (Heber Jentzch v. Bent Corydon, L.A.S.C. Case No. NVC 14274) found no impropriety with Armstrong's or any of the other settlements. On July 25, 1989, CORYDON filed a Motion to Dismiss in that action for alleged obstruction of justice. His theory was that he was being deprived of full access to former litigants who had entered into settlement agreements with Scientology, specifically naming one William Franks, Vickie Aznaran, and Gerald Armstrong as persons to whom he was allegedly denied access.[6]

The Honorable Robert Feinerman issued a ruling denying defendant CORYDON's Motion to Dismiss on grounds of obstruction of justice (attached hereto as Exhibit "C").

This Court is referred specifically to Page 3 of Judge Feinerman's Order denying CORYDON's Motion to Dismiss or Alternative Relief wherein Judge Feinerman holds, after reviewing Mr. Armstrong's Settlement Agreement, that:

> "They (parties to the settlements) can be deposed and they can be compelled to testify at time of trial. The mutual release agreement in the other cases recognize (as they must) that the parties to the agreements are legally obligated to testify when 'compelled to do so by lawful subpena or other lawful process' (quoting from the Armstrong Settlement Agreement).
>
> It should also be noted that a Court cannot order anyone to voluntarily cooperate with a party litigant. A Court can enforce the provisions of the discovery act by appropriate

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sanctions but it cannot fashion a enforceable order re 'voluntary cooperation'".

Furthermore, settlement agreements which defendants believe were identical to the one referred to in plaintiff's moving papers herein, have been approved by various Courts. Examples of the diverse judicial orders upholding these agreements are the orders of: 1) Judge Consuelo B. Marshall in Jefferson v. Church of Scientology of California, No. CV-81-3261 C.D. Cal.; 2) Judge Manuel Real in Church of Scientology of California v. Laurel Sullivan, No. CV-85-3075 R C.D. Cal.; 3) Judge Consuelo B. Marshall in Lockwood v. Church of Scientology of California, No. CV-81-4109-CBM C.D.Cal.; 4) Judge Spencer J. Letts in Schomer v. Author Services, Inc., et al., No. CV-848335 C.D.Cal.; 5) Judge Consuelo B. Marshall in Peterson v. Church of Scientology of California, No. CV-81-3259 C.D.Cal.; 6) Judge Consuelo B. Marshall in Garrity v. Church of Scientology, No. CV-81-3260 C.D.Cal. (These Orders are attached hereto collectively as Exhibit "D".)

Lastly, although not dealing with a settlement agreement identical to the one at issue herein, Judge Elizabeth A. Kovachevich, Judge of the Federal District Court for the Middle District of Florida, approved settlement agreements with provisions in them which prohibited the parties settling with Scientology from discussing any of their experiences within Scientology with anyone other than their immediate family members in the cases of Cazares v. Church of Scientology, et al., No. 82-886-CIV, Burden v. Church of Scientology of California, et al., No. 80-501-CIV, and Margery Wakefield v. Church of Scientology of California, et al., No. 82-

1313-CIV. Predicated on Margery Wakefield's alleged violation of her settlement agreement Judge Kovachevich has already issued an injunction prohibiting Wakefield from discussing her experiences in Scientology with anyone but her immediate family, pursuant to which Magistrate Paul Game issued an OSC re contempt for violating that injunction and has held an evidentiary contempt hearing, the results of which have not yet been announced.

As a last point in this regard, even a cursory reading of that section of the Settlement Agreement quoted in footnote 2 of plaintiff's moving papers evidences that the Settlement Agreement does not require those settling parties to, as plaintiff contends, "avoid service of process" (see plaintiff's moving papers, pg. 2, lns. 2 and 3). Regardless, history has proven that the settlement agreements, no matter how interpreted, do not prevent settling parties from testifying pursuant to subpenas served upon. Plaintiff, in this very case, has readily and with considerable ease, served Messrs. Schomer, DeWolf and Armstrong. Plaintiff has taken the depositions of Schomer and De Wolf, two of those settling parties, and is on the threshold of taking Gerald Armstrong's deposition.

IV. HELLER'S ONE TELEPHONE CALL WITH ARMSTRONG WAS LAWFUL AND PROPER.

Even if Gerald Armstrong's declaration (Exhibit "E" to plaintiff's moving papers) were fully truthful (which it is not -- see Declaration of Lawrence E. Heller attached), the acts ascribed to Mr. Heller in his discussions with Armstrong must be construed as ethical and legal. Regardless, as can be seen from the Declaration of Lawrence E. Heller attached hereto, Heller recalls having only one (1) telephone call with Armstrong wherein he did, in fact, offer to provide him with an attorney to represent him at his deposition, which Armstrong promptly refused. Mr. Heller did not offer to have his client pay for that attorney or offer to indemnify Armstrong for sanctions which might be imposed (sanctions were never discussed).

Clearly, Heller's communications with Armstrong did not have a chilling effect on what appears to be Armstrong's burning desire to testify in this litigation, whether he has knowledge relevant to the issues in this litigation or not. Just as clearly Armstrong nowhere in his declaration indicates Heller threatened him with litigation. It should be noted that CORYDON, other than his obscure reference to Business and Professions Code, section 6068(d) in footnote 12[7] of his moving papers, fails to cite any statutes or Cannons of Ethics that he claims Heller has violated.

V. PLAINTIFF, AND PARTICULARLY HIS COUNSEL, WERE WELL AWARE FROM THE DEPOSITION TESTIMONY ELICITED FROM SCHOMER AND DeWOLF THAT THEIR PRESENT MOTION WAS IN BAD FAITH. ACCORDINGLY, SANCTIONS UNDER RULE 128.5 SHOULD BE AWARDED.

As exhibited in Section I hereinabove, plaintiff and his counsel, both of whom sat through the depositions of Ronald DeWolf and Howard Schomer, were well aware of the fact that neither of those deponents had been threatened or intimidated in any fashion whatsoever. They were also aware of the fact those deponents gave honest and truthful testimony.

Plainti and his counsel went into ose depositions believing that by subpoenaing parties who at one time had been adverse to Scientology and certain unrelated entities they would elicit testimony favorable to their case. When those two deponents testified to matters which were instead harmful to the plaintiff's case, plaintiff and Ms. Plevin saw as their only remedy the highly unusual request contained in their Motion: vitiate the deposition testimony taken thus far and have those depositions retaken, this time without counsel being present to represent those deponents' interests.

Furthermore, it is clearly plaintiff and his attorney's intent, through this Motion, to attempt to taint and influence this Court against defendants and their counsel.

The relief sought in plaintiff's motion is prima facie sought in bad faith and, given plaintiff and his counsel's full and complete knowledge of the circumstances surrounding those two depositions, it is clear the entirety of this Motion was brought for improper purposes, and in bad faith. Accordingly, defendants should be reimbursed for the necessity of opposing this Motion and appearing at the hearing thereof.

Not only is plaintiff's Motion itself filed in bad faith but, plaintiff's attorney, Toby Plevin, has intentionally misrepresented the contents of Armstrong's declaration in the body of the Motion which she authored.

For example, Plevin asserts that after Armstrong was served with a deposition subpena by CORYDON in this case, Armstrong received a videotape in the mail from a private investigator that had been introduced in evidence against Armstrong in a prior case. Ms. Plevin also opined that the mailing of this video tape by the private investigator constituted a "threat" and a "chilling scenario". Ms. Plevin's characterization of Armstrong's declaration is misleading and disingenuous. Armstrong's declaration actually states that he received that video from the London Sunday Times from whom he had apparently requested it, and that it had been given to the Times by an investigator in "late 1987 or early 1988", years before service of this subpena. The video had been made in 1984 for a trial wherein Armstrong was not a party.

Ms. Plevin also falsely characterizes paragraph 40 of the Armstrong declaration as alleging that "his refusal to cooperate with a Church request following the settlement led to threats by Church attorneys to disclose embarrassing personal information." In fact, paragraph 40 of Armstrong's declaration alleges no threat. It merely states that CORYDON had filed a motion to unseal the file, that the Church was opposing that motion, and that the Church's attorney had pointed out to Mr. Armstrong's attorney that if the file were unsealed, a private document of Armstrong would also be unsealed.

Ms. Plevin's false characterizations of the Armstrong declaration to paint a "chilling scenario" are both irresponsible and knowingly false.[8]

Further, a primary focus of the Armstrong declaration itself is simply wrong - there is no reciprocal provision in the Settlement Agreement prohibiting the Church from commenting upon the allegations of Armstrong. As set forth in the Heller, Long and Hertzberg declarations, an important part of the Settlement Agreement revolved around the continuing ability of the Church to refute the often bizarre allegations made by Mr. Armstrong. Thus, this issue was addressed during the settlement negotiations, with the result that no clause was included in the agreement preventing the Church from such action.

This Court has authority to impose sanctions for actions taken in bad faith which are frivolous or cause unnecessary delay pursuant to CAL. CIV. PROC. CODE §128.5, which provides in relevant part:

> "(a) Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. . . .
> "(b) For purposes of this section:
> "(1) 'Actions or tactics' include, but are not limited to, the making or opposing of motions or the filing and service of a complaint or cross-complaint...
> "(2) 'Frivolous' means (a) totally and completely without merit or (b) for the sole purpose of harassing an opposing party." (Emphasis added.)

Based thereon, moving parties request sanctions for opposing and appearing at this baseless Motion in the sum of $4662.00 (see attached Declaration of Lawrence E. Heller).

Dated: March 27th, 1990

TURNER, GERSTENFELD, WILK & TIGERMAN

BY: ______________________
Lawrence E. Heller
Attorneys for Defendants AUTHOR SERVICES, INC. and BRIDGE PUBLICATIONS, INC.

WYMAN, BAUTZER, KUCHEL & SILBERT

BY: ______________________
William T. Dresher
Attorneys for Defendants CHURCH OF SCIENTOLOGY INTERNATIONAL, RELIGIOUS TECHNOLOGY CENTER, CHURCH OF SCIENTOLOGY OF CALIFORNIA, SCIENTOLOGY SCIENTOLOGY MISSIONS INTERNATIONAL, HEBER JENTZSCH and TIMOTHY BOWLES

BOWLES AND MOXON

BY: ______________________
Kendrick L. Moxon
Attorneys for All Church Entities

DECLARATION OF LAWRENCE E. HELLER

I, LAWRENCE E. HELLER, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts in the State of California. I am the attorney principly responsible for the representation of both Bridge Publications, Inc. and Author Services, Inc. in this action. The following testimony is of my personal knowledge and I am available and competent to personally testify thereto.

2. I have read the Declaration of Gerald Armstrong which is attached as Exhibit "E" to the moving papers herein. Of the fifty-four (54) paragraphs in that twenty-four (24) page declaration, there are but two (2) paragraphs wherein Armstrong testifies about conversations between the two of us: paragraphs 4 and 7. Accordingly, this declaration will only address those two (2) paragraphs in that it is my belief that the remainder of the declaration is patently irrelevant to the instant Motion. Also, I have little or no knowledge concerning the remaining parts of that declaration other than to state that, to my knowledge, there is nothing in Armstrong's settlement agreement that prevents Scientology from providing written responses to any adverse publicity written about it.

3. It should initially be noted that I have never litigated against Ronald DeWolf. So, I do not believe I ever maintained an adversarial relationship with Mr. DeWolf.

4. In December of 1986, plaintiff Church of Scientology entered into a settlement agreement with, among others, Gerald Armstrong. Mr. Armstrong's settlement was part of a global settlement of cases against the Church of Scientology and others,

being litigated by Boston, Massachusetts attorney, Michael J. Flynn. I was the attorney principly responsible for effecting that global settlement. The settlements concerned well over a dozen plaintiff litigants as well as various Church of Scientology entities and other third parties sued as defendants. Those settlements also concerned ASI, a defendant in this matter, which was a co-defendant in only one of those many actions. Those settlement negotiations transpired over the course of several months, ultimately culminating in a multi-week session in a hotel in the City of Los Angeles, where most of the lawyers, and most of the parties, involved in the litigation met extensively. The lawsuits underlying those settlements had been vociferously litigated for many years.

5. Settlement negotiations were both arduous and difficult. However, settlements were ultimately entered into between the numerous parties. The settlements provided for the non-disclosure of facts underlying the various litigation involved, as well as, and most importantly, non-disclosure of the terms of the settlements themselves.

6. In October of 1989 I was informed by Toby Plevin, counsel for CORYDON, that Mr. Armstrong had been served with a deposition subpena in the CORYDON case. I thereafter received notice of Mr. Armstrong's deposition with an accompanying subpena duces tecum which sought only documents relating to Mr. Armstrong's settlement agreement and which, in my opinion, did not relate in the least to the issues involved in this litigation. (Attached hereto as Exhibit "1"). At that time I called attorney Michael Flynn in Boston to inquire as to what Armstrong's intentions were with regard to testifying about his settlement agreement. I phoned Mr. Flynn

because it was my understanding that Mr. Flynn at that time still represented Mr. Armstrong as he had during the settlement negotiations. Mr. Flynn told me that I should speak directly with Mr. Armstrong on the subject and further informed me that he would arrange for me to speak with Mr. Armstrong. Mr. Flynn called me back shortly thereafter and informed me that he had secured Mr. Armstrong's permission for me to speak with him and that Mr. Armstrong was expecting my phone call.

7. It should be noted at the outset that had the Armstrong subpena not demanded production of the settlement documents from Armstrong I would not have called Mr. Flynn.

8. Shortly thereafter, (it may well have been on October 23, 1989 as Mr. Armstrong testifies in paragraph 4 of his declaration), I telephoned Mr. Armstrong and asked him essentially the same question I had asked Mr. Flynn. I informed Mr. Armstrong that I understood that he had been subpenaed to testify in Mr. CORYDON's case. I further explained to him that I understood that he was compelled to honor the subpena but that he would likely be asked a lot of questions respecting the settlement in view of the fact that he had been served with a subpena duces tecum requesting nothing but his settlement documents. As Mr. Armstrong states in paragraph 4 his declaration, I thereafter asked if he planned to have an attorney representing him at his deposition and if it would be Mr. Flynn. He said he did not have an attorney. I asked him if he would like assistance in obtaining counsel to attend the deposition on his behalf to protect him during that deposition. At no time do I recall offering to pay for his attorney. I don't believe the subject even came up.

9. Mr. Armstrong, after a short time, indicated that he was uninterested in discussing the matter with me and that he would personally make the determination as to what questions were relevant, and what questions he would answer at his deposition without my assistance. I responded that even though I recognized that he had to testify pursuant to the subpena with which he was served, that if he did indeed freely answer questions relating to his settlement agreement, he may well be in breach of that agreement and that, accordingly, it was within his best interest to find counsel to protect him. After I made that statement, I recall Mr. Armstrong saying to me that he would think about it and, if he changed his mind, he would get back to me. (Mr. Armstrong also told me he believed Scientology had already breached his settlement agreement but I don't recall him specifying in what manner that breach occurred).

10. I did, during the course of that conversation, suggest to Mr. Armstrong that his best course of action would probably be to have an attorney represent him and to have that attorney instruct him to refuse to answer questions respecting the settlement agreement unless compelled to do so by this Court through a subsequent motion. I did not, and do not now, consider that suggestion improper. As Mr. Armstrong truthfully testifies, I did tell him that he had been paid a considerable amount of money and, accordingly, had a contractual obligation not to divulge information respecting the settlement. As Mr. Armstrong again truthfully testified in his declaration, I did inform him that I felt that he was sort of stuck between his duty to honor both the subpena and his settlement agreement and that the safest position he could take

was to have an attorney protect his interests as detailed hereinabove. At no time did I threaten him with a lawsuit, speak to him in a threatening or intimidating manner or even mention a lawsuit The Court should note Armstrong never says I threatened him with litigation in his declaration.

11. However, to my recollection, all of this took place during the course of one (1) telephone conversation. I do not recall him calling me back as he testifies to doing in his declaration.

12. At paragraph 10 of his March 15, 1990 declaration, Mr. Armstrong sets forth what he purports to be a section of the Armstrong Settlement Agreement concerning the duties of confidentiality owed by Mr. Armstrong. Mr. Armstrong then goes on through the majority of the balance of his March 15th declaration to allege that the Church of Scientology of California has violated reciprocal duties of confidentiality by commenting upon, in other litigation, testimony and facts concerning Mr. Armstrong and his experiences within the Church of Scientology.

13. The confidentiality provisions of the Armstrong Settlement Agreement are nor reciprocal in nature. Mr. Armstrong does have duties of confidentiality under the terms of the Armstrong settlement and paragrapg 10 appears to be an accurate recitation of those duties. However, there are no reciprocal duties of confidentiality under the terms of the Armstrong Settlement Agreement that apply to any of the Church parties in the settlement.

14. An important part of the Armstrong settlement was that the Church was not bound by the same confidentiality provisions as Armstrong and that the Church parties remain free to comment upon

and use information pertaining to Mr. Armstrong's experiences in the Church of Scientology. At the time of the Armstrong settlement, information from Mr. Armstrong was being used in a number of cases around the world. It was important to the Church parties to the Armstrong settlement that they remain free to defend themselves against allegations supported by information originating from Armstrong prior to the settlement. I discussed this aspect of the confidentiality provisions the settlement agreement with Armstrong's counsel, Michael J. Flynn, during my settlement negotiations with him in 1986 and it was clearly understood by both sides of the negotiations that the confidentiality provisions were not to be reciprocal. Any assertions to the contrary now being made by Amrstrong are false.

15. Turning to a related matter, during the course of Mr. Schomer's deposition, Attorney Plevin indicated on the record that I had in some fashion "coached" Schomer with regard to his responses to certain questions. Ms. Plevin said on the record of that deposition to Mr. Schomer, prior to asking him a question: "Now that Mr. Heller has told you what you can or cannot remember . . ." (see pg. 118 of Schomer deposition attached to the Points and Authorities as part of Exhibit "B".

16. After reviewing Schomer's deposition transcript, I directed correspondence to Ms. Plevin dated March 15, 1990 (Exhibit "2" to this Declaration.) wherein I demanded a retraction of her statement quoted above arguing she had no basis for it. Ms. Plevin replied to that letter through return correspondence dated March 16, 1990, wherein she said , "However, my comment on page 118 of the transcription was an expression of annoyance, not a statement of

fact. I apologize". (see Plevin correspondence dated March 16, 1990 attached hereto as Exhibit "3"; emphasis added).

17. In my March 15th letter, I also expressed my concern at the three (3) hours of questioning Schomer was subjected to during his deposition concerning my representation of him. My March 15th letter further stated on page 2 thereof that I protested as improper and unsupported Ms. Plevin's statement on the record of that deposition directed to me that: ". . . on your client's behalf you are attempting to frighten Mr. Schomer with potential lawsuits arising out of confidentiality agreements in the settlement your clients reached with Mr. Schomer which required him to avoid service of process and to create other difficulties with respect to testimony adverse to Scientology".

18. In response to being called upon to explain that comment, Ms. Plevin stated in her return correspondence of March 16th that her statement accusing me of trying to frighten Schomer with the threat of litigation was made by her as a prelude: ". . . to elicit testimony to establish exceptions to the attorney-client privilege. In that context I stated that it was my intention to establish that Mr. Schomer has been influenced to have you represent him. The testimony was that you had not frightened him. You cannot contend that an attorney's statement of purpose for a line of questions is the equivalent of a statement of fact." (see page 2 of Plevin letter attached hereto as Exhibit "3"; emphasis added).

19. It would appear Ms. Plevin radically changed her position in the three (3) days that transpired between the time she wrote her correspondence to me on March 16, 1990 and the point in time that she filed the instant Motion on March 19, 1990.

20. Ms. Plevin's Motion is a bad faith attempt to poison this Court against defendants and their counsel without any basis whatsoever. As prayed in this Opposition, sanctions must be awarded. I have spent 19.2 hours preparing this Opposition and project another three (3) hours of travel and court time to argue this Motion. My hourly rate is $210.00 per hour. I therefore request sanctions in the sum of $4662.00.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of March 1989, at Beverly Hills, California.

L. E. Heller

Lawrence E. Heller
Declarant

DECLARATION OF KENNETH LONG

I, KENNETH LONG, declare as follows:

1. I am over 18 years of age and a resident of the State of California. The matters set forth herein are based on my personal knowledge.

2. On March 15, 1990, Gerald Armstrong ("Armstrong") executed a declaration in the above-captioned case. His declaration was filed in support of plaintiff's Motion for an Order Directing Non-Interference with Witnesses and Disqualification of Counsel and, in paragraphs 22-31, 33-35 and 38-39, Armstrong referred to several affidavits I executed in October, 1987.

3. The crux of Armstrong's complaint about those affidavits is probably found at paragraph 35 of his declaration. There, Armstrong quotes from an affidavit I executed on October 7, 1987, and in which I described my January, 1987 discovery that Armstrong had knowingly violated orders issued by Los Angeles Superior Court. Taken together, my October, 1987 affidavits demonstrate that:

a. In August, 1982, Armstrong was ordered by Judge John L. Cole to surrender certain documents and materials to the custody of the Clerk of the Los Angeles Superior Court.

b. Armstrong later attested, on numerous occasions, that he had surrendered all such documents and materials, and that he had none in his possession.

c. In January, 1987, following settlement of

Scientology of California ("CSC"), Armstrong turned over to CSC all Church-related documents in his possession. I personally inspected the documents turned over by Armstrong, and found a number of copies of the documents which Armstrong had previously sworn that he had surrendered to the Clerk of the Court.

d. Based on my discovery of these documents, I concluded that Armstrong had intentionally perjured himself on numerous occasions, and had as well knowingly violated orders issued by judges at all levels ranging from the Los Angeles Superior Court to the Supreme Court of the United States.

4. These affidavits were executed in the case of Church of Scientology of California v. Russell Miller and Penguin Books, Limited ("Miller"), Case No. 6140 in the High Court of Justice located in London, England. In Miller, CSC sued author Russell Miller and his publisher Penguin Books for breach of confidence arising out of Miller's use of some of the documents described in paragraph 2 above. Under United Kingdom legal procedure, since CSC had made out a prima facie case for breach of confidence against Armstrong in Church of Scientology of California and Mary Sue Hubbard v. Gerald Armstrong, LASC Case No. C 420153, it was possible to extend that breach of confidence claim to Miller and Penguin Books by linking them to Armstrong. The affidavits, therefore, were required to detail the elements of the breach of confidence claim against Miller and Penguin, and the claim could not have

been brought without explaining the underlying actions taken by Armstrong.

5. There is no provision in the settlement agreement with Armstrong which would prohibit CSC from using information obtained through litigation with Armstrong in seeking legal remedies for wrongs committed by third parties.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: March 26, 1990

Kenneth Long

Kenneth Long

DECLARATION OF GERALD ARMSTRONG

I, Gerald Armstrong, declare:

1. I am making this statement because the facts herein are relevant in the trial of Religious Technology, et al. v Joseph Yanney, et al., Los Angeles Superior Court Case No. C690211, now proceeding before Judge Raymond Cardenas.

2. On November 30, 1989 I attended a hearing before Judge Norman Epstein in the Los Angeles Superior Court of the Scientology organization's motion to prevent my deposition from going forward in the case of Bent Corydon v. Church of Scientology International, et al., No. C694401. Before the hearing, while waiting in the hall outside the courtroom I was served with a subpoena duces tecum ordering me to appear as a witness in the Yanney trial.

3. On February 15, 1990 I received a telephone call from attorney Michael Tabb, a partner in the Boston, Massachusetts law firm of Flynn, Sheridan & Tabb which had represented me in the case of Church of Scientology of California and Mary Sue Hubbard v. Gerald Armstrong, Los Angeles Superior Court No. C420153. Mr. Tabb said that he had been called by Larry Heller, a supervising attorney for the Scientology organizations, hereinafter referred to as the organization, who told him that the organization considered I had violated my settlement agreement by being in the courthouse to be served in Yanney, that they intended to prove it and that I would be sued.

4. On March 21 I spoke by telephone with attorney Michael Flynn, counsel of record in Armstrong, who said that he had been called by Mr. Heller two or three weeks before. Mr. Heller told Mr. Flynn that I was sitting

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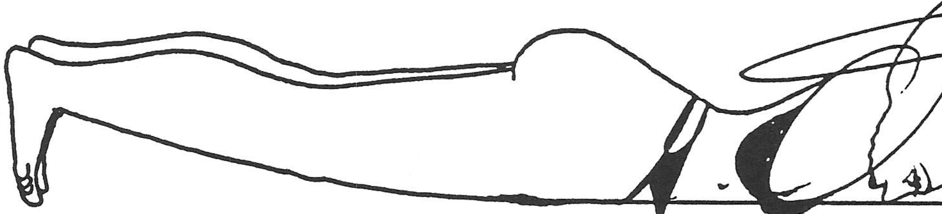
in the courtroom in the Yanney trial and that if I testified in Yanney I would be in violation of the settlement agreement and I would be sued. Mr. Heller asked Mr. Flynn to call me and tell me not to testify. Mr. Flynn said no. The day I had been present at the Yanney trial was March 5, 1990.

5. Attached hereto is a copy of my declaration of March 15, 1990 and the exhibits thereto. I am providing this documentation because it concerns the settlement agreement I entered into with the organization and makes this declaration and my position understandable.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this twenty-sixth day of March, 1990 at Oakland California.



Gerald Armstrong

6221

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): TELEPHONE NO.:
Turner, Gerstenfeld, Wilk & Tigerman (213) 657-3100
8383 Wilshire Blvd., Suite 510
Beverly Hills, CA 90211

ATTORNEY FOR (Name): Defendants AUTHOR SERVICES INC AND BRIDGE PUBLICATIONS, INC.

FOR COURT USE ONLY

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1400

NAME OF COURT: Los Angeles Superior Court
STREET ADDRESS: 111 North Hill Street
MAILING ADDRESS: Los Angeles, CA
CITY AND ZIP CODE: Central District
BRANCH NAME:

PLAINTIFF/PETITIONER: BENT CORYDON

DEFENDANT/RESPONDENT: CHURCH OF SCIENTOLOGY INTERNATIONAL, etc. et al.

CIVIL SUBPENA ☒ **Duces Tecum**

CASE NUMBER: C 694 401

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name):

GERALD ARMSTRONG

1. **YOU ARE ORDERED TO APPEAR AS A WITNESS in this action as follows unless you make a special agreement with the person named in item 3:**

a. Date: April 24, 1990 Time: 10:00 AM Dept./Div.: Room.:
b. Address: 6380 Wilshire Blvd., Suite 1600, Los Angeles, CA

2. **AND YOU ARE**

a. ☒ ordered to appear in person.

b. ☐ not required to appear in person if you produce a true, legible, and durable copy of the records described in the accompanying affidavit as follows: (1) place the copy of the records in an envelope (or other wrapper) and seal it; (2) attach a copy of this subpena to the envelope or write on the envelope the case name and number, name of the witness and date and time from item 1 above; (3) place this first envelope in an outer envelope or wrapper, seal it, and mail it to the clerk of the court at the address in item 1.

c. ☐ ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian of records or other qualified witness and the production of the original records is required by this subpena. The procedure authorized pursuant to subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpena.

3. **IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE ATTORNEY REQUESTING THIS SUBPENA, NAMED ABOVE, OR THE FOLLOWING PERSON, BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**

a. Name: Lawrence E. Heller, Esq. b. Telephone number: (213) 657-3100

4. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 3.

5. You are ordered to appear in this civil matter in your capacity as a peace officer or other person described in Government Code section 68097.1.
Date: Clerk, by ______________________, Deputy

DISOBEDIENCE OF THIS SUBPENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

For Court Use Only

Dated:

Frank S Zolin
(SIGNATURE OF PERSON ISSUING SUBPENA)

FRANK S. ZOLIN
(Type or Print name)

County Clerk/Executive Officer of the Superior Court
(TITLE)

(See reverse for proof of service)

98 I.

NAME, ADDRESS, AND TELEPHONE NUMBERS OF ATTORNEY(S)
Turner, Gerstenfeld, Wilk & Tigerman
83838 Wilshire Boulevard, Suite 510
Beverly Hills , CA 90211
(213) 657-3100

6222

ATTORNEY(S) FOR Defendants
AUTHOR SERIVCES, INC. and BRIDGE
PUBLICATIONS, INC.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

BENT CORYDON

PLAINTIFF(S)

VS

CHURCH OF SCIENTOLOGY INTERNATIONAL,
INC., etc.,et al.

DEFENDANT(S)

CASE NUMBER

C 694 401

APPLICATION FOR SUBPOENA DUCES TECUM RE DEPOSITION

STATE OF CALIFORNIA, County of Los Angeles

The undersigned states: That he is attorney of record for defendants AUTHOR SERVICES, INC. and BRIDGE PUBLICATIONS, INC. in the above entitled action; that the deposition of GERALD ARMSTRONG is noticed for hearing before such duly commissioned notary public at 10:00 A M., in Room No. , located at 6380 Wilshire Blvd., Suite 1600 in the City of Los Angeles , County of Los Angeles State of California, on April 24 , 19 90.

That GERALD ARMSTRONG has in his possession or under his control the exact matters or things designated below:

Tape(s), or any other records, whether sound or written, of recordings of any and all telephone conversation(s) between Lawrence E. Heller and Gerald Armstrong whether such tape(s) record both participants or one participant to said telephone conversation(s).

Lawrence E. Heller, Esq.
TURNER, GERSTENFELD, WILK & TIGERMAN
8383 Wilshire Boulevard
Suite 510
Beverly Hills, CA 90211
(213) 657-3100

Attorneys for Defendants
AUTHOR SERVICES, INC. AND BRIDGE PUBLICATIONS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BENT CORYDON, Plaintiff, vs. CHURCH OF SCIENTOLOGY INTERNATIONAL, et al., Defendants. AND RELATED CROSS-ACTIONS	CASE NO. C 694 401 NOTICE OF TAKING OF DEPOSITION OF GERALD ARMSTRONG AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD.

PLEASE TAKE NOTICE that defendants AUTHOR SERVICES, INC. and BRIDGE PUBLICATIONS, INC. will take the oral deposition of Gerald Armstrong on April 24, 1990 at 10:00 a.m. at law offices of Toby L. Plevin located at 6380 Wilshire Boulevard, Suite 1600, Los Angeles, California after plaintiff (who has previously noticed and subpenaed Gerald Armstrong for deposition on said date) has completed its questioning. Said deposition shall continue from day to day until completed unless other arrangements are made on the record.

PLEASE TAKE FURTHER NOTICE that Gerald Armstrong is hereby requested to produce the following items at the time of his deposition:

> Tape(s), or any other records, whether sound or written, of recordings of any and all telephone conversation(s) between Lawrence E. Heller and Gerald Armstrong whether such tape(s) record both participants or one participant to said telephone conversation(s).

Said deposition shall be taken before a duly commissioned Notary Public who may appear therefore.

Dated: April 3, 1990

TURNER, GERSTENFELD, WILK & TIGERMAN

BY: ______________________
Lawrence E. Heller
Attorneys for Defendants
AUTHOR SERVICES, INC. and
BRIDGE PUBLICATIONS, INC.

That the above documents are material to the issues involved in the case by reason of the following facts:

Deponent has filed a declaration in this litigation in support of plaintiff's case, and one of plaintiff's motions, wherein telephone call(s) with Lawrence E. Heller were described. The attorney for plaintiff, Toby Plevin, has stated on the Court's record that recordings were made of those telephone call(s). The content of those telephone calls are disputed.

That good cause exists for the production of the above described matters and things by reason of the llowing facts:

Defendants herein have no other source of obtaining this information other than this method.

WHEREFORE request is made that the Subpoena Duces Tecum issue

ecuted April 3 , 19 90 , at Beverly Hills , California.

eclare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Signature of Declarant)
Lawrence E. Heller

---

declaration under penalty of perjury must be signed in California, or in a state that authorizes use of a declaration in lieu n affidavit; otherwise, an affidavit is required.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 8383 Wilshire Boulevard, Suite 510, Beverly Hills, California 90211.

On April 3, 1990, I served the foregoing document described as NOTICE OF TAKING DEPOSITION OF GERALD ARMSTRONG AND REQUEST FOR PRODUCTION OF DOCUMENTS by placing [] the original [x] a true copy thereof enclosed in sealed envelopes addressed as follows:

Toby L. Plevin, Esq.
6380 Wilshire Boulevard
Suite 1600
Los Angeles, CA 90025

Kendrick Moxon, Esq.
Bowles & Moxon
6255 Sunset Boulevrd
Suite 2000
Los Angeles, CA 90028

William T. Dresher, Esq.
Wyman, Bautzer, Kuchel & Silbert
2049 Century Park East
14th Floor
Los Angeles, CA 90067

Michael Hertzberg
740 Broadway
5th Floor
New York, New York 10003

[x] BY MAIL - I deposited such envelope in the mail at Beverly Hills, California. The envelope was mailed with postage thereon fully prepaid as follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Beverly Hills, California in the ordinary cause of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] BY PERSONAL SERVICE - I delivered such an envelope by hand to the offices of the addressee.

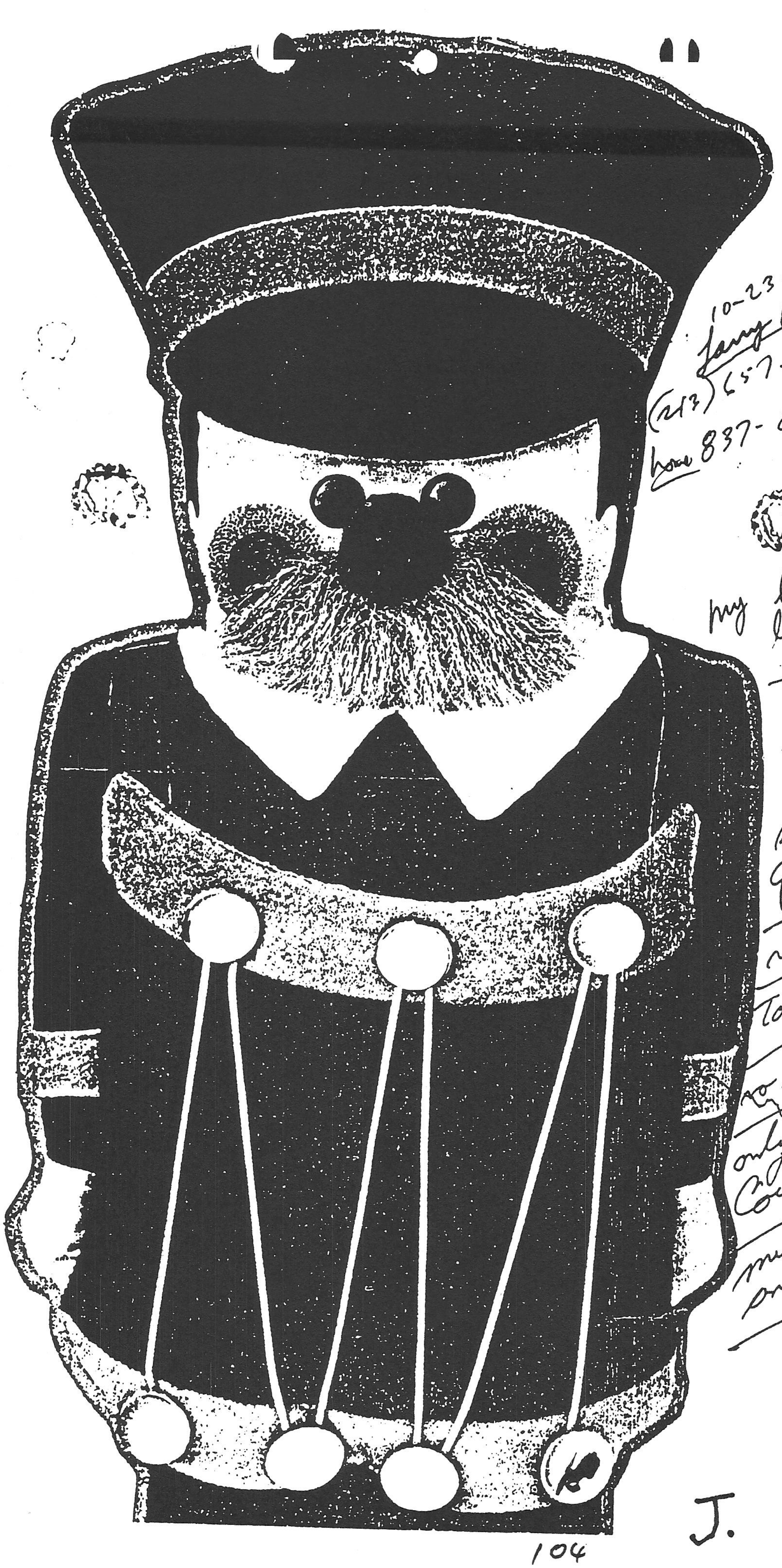
[x] (State) I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 3, 1990, at Beverly Hills, California.

Susan J. Fleming
SUSAN J. FLEMING

6227



10-23-89
Larry Heller
(213) 657-3100
home 837-8651

my bottom line — to keep of status quo —

reinvolved

Toby Plevin

no reference

only Court order

must answer

J.

10-25-89

Larry Heller — 1417
1419

① 11-16-89 okay cut off

② can't have organization pay for atty -

– offered to other side

(He'll call me back -

I said I'd call + today).

LH -if you find -
up to you
letter -
– have a problem
me regardin
eg - when in C of S
when archivist -
didn't you find out
misrepresented Nav
105 Phys. K.

②

don't concern self
w/ who like
- obligation i stead ct
- lawfully issued
subpoena
- contractual obligation
pd money for
- not to divulge
confid info.

---

if ct order
- wholesale disclose
- problem -
- trying to be fair
-

---

answer to problem
- answer is let final
arbiter 106

decide - the Ct

- blackmail mtn settlement
- must move compel
on answer
- stuck in middle
of it.
- signed contract
- &.

made offer if
Ct say - fine $250.00
we will indemnify
- sanction -

---

you want it tested

mtn to compel -
- determination
- answer
-

outside chance
- client - will agree
- sanction'd by us -
- will take resp.
- talk to other atty
- don't lie
- mortal combat
- have mtg around town
- protect
- not
- put position where
wouldn't have sanction
-

---

can't do n/s
- have to talk Oliver out.
- a. ~~appear~~ -
b. what do w/questions
- not necessarily get
atty. 108

⑤

wait for Ct
- process doing protective
order to stop depos.

-

-

single -

1979-82 - B.C.

ops - -

done to prevent getting -
on record -

Q. C.R.A. - goes to judge.

- chopped up -

- M/B a. for sanctions -
- determined
if breached settle-
ment agreement

"If [illegible] may get sued —"

— I'll be back
— will not answer now —

— phone atty call
— explain situation
— can touch bill —

---

believe atty will
— soft position

protect ass &
client's ass

— won't jerk around
— attempt —

Don't have problem w/
if c/b beat up Bert Conydon –

Pd a lot of money

① c/b sick of lit.

② didn't want judgment

③ long confid.

n/g wrong w/ it

lots of settlement

- Michael wanted as much as we.
- B.C.'s – n/g to do w/ case –
- hopefully.
- philosopher vs pragmatic / atty
- cut & dried perspective.

///

To talk into giving a declaration:

11-20-89 6235

LH: 15:45

- received
- very strongly for & supportive
- 2 things
  1. little or no or minimal contact w/ Croydon
  2. subsequent to leaving - received no info re Croydon
- assistance to us & help assure you. -

If do not go forward

- possibilities if does go forward -

112 L.

know Bert quite well -

- to leverage a settlement

-

- to a great

known in Church -

-

you think will help BC

by appearing -

- BC will never help me

- only us -

-

will rectify the problem

- should have a long talk

w/ atty

signed non disclosure

- knowledge of BC's
  in church -
- other side of plant

~~bd~~ LRH bio's -

they considered confident

- will carefully ~~[illegible]~~ -

  rights

- when occur

strongly suggest

- refuse to answer
  subject to atty instruction

- contractual obligation as far as I can tell.

This is a transcript of a recording of Gerald Armstrong's side of a telephone call received from attorney Lawrence Heller on November 20, 1989. The recording begins after the start of the conversation. Times when Mr. Heller is speaking are indicated by "LH." Armstrong's notes of Mr. Heller's words made during the call should be read to make the conversation understandable.

LH

GA I don't think so.

LH

GA I don't....No, it would be inappropriate.

LH

GA Yeah, I know Bent quite well.

LH

GA I would say that I'm a relevant witness.

LH

GA I would say to a great extent.

LH

GA I don't believe that I can. That I can.... from everything I've seen that's going on, and everything I've heard that's going on, and knowing my history, and the issues, I cannot see me ducking it at all. I can't see that.

LH

GA Right.

LH

GA Right. But the truthful declaration would be that I would see that my experiences and my knowledge of Bent would be relevant to his case. And that's what I'm saying, that it would be impossible for me to state it any other way.

LH

115

GA Uh, yeah.

LH

GA Yeah

LH

GA Yeah, I think that you could check with Ken Long on, you know, what has been done regarding Gerald Armstrong subsequent to the settlement.

LH

GA There have been a number of things. The organization has not been silent in the least.

LH

GA He'll be able to tell you. Just simply say.....Get from him everything that's been filed regarding Armstrong, everything that.... all of his declarations regarding me, all the false report....so-called false corrections that have been put out subsequent to the settlement, any time that the so-called Armstrong Operation videotape has been used subsequent to the settlement. I think you'll find a rather extensive list.

LH

GA There was an edited version.

LH

GA Yeah.

LH

GA Yeah.

LH

GA Okay, bye.

End